

PUBLIC BUILDINGS REFORM ACT OF 1993

Y 4. P 96/10: S. HRG. 103-592

RING

Public Buildings Reform Act of 1993...

BEFORE THE

SUBCOMMITTEE ON

WATER RESOURCES, TRANSPORTATION,
PUBLIC BUILDINGS, AND ECONOMIC DEVELOPMENT
OF THE

COMMITTEE ON

ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

S. 1760

A BILL TO AMEND THE PUBLIC BUILDINGS ACT OF 1959 TO IMPROVE
THE PROCESS OF CONSTRUCTING, ALTERING, PURCHASING, AND AC-
QUIRING PUBLIC BUILDINGS, AND FOR OTHER PURPOSES

APRIL 26, 1994

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PUBLIC BUILDINGS REFORM ACT OF 1993

TUESDAY, APRIL 26, 1994

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION,
PUBLIC BUILDINGS, AND ECONOMIC DEVELOPMENT,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 406, Dirksen Senate Office Building, Hon. Howard Metzenbaum (acting chairman of the subcommittee) presiding.

Present: Senators Metzenbaum, Simpson, Warner, Graham, and Reid.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. The subcommittee meets this morning to consider three important matters regarding United States public buildings management. First, GSA's fiscal year 1995 public buildings program, second the results of GSA's time-out and review, in which nearly 200 pending building projects were reevaluated. Finally, the subcommittee will receive testimony S. 1760, the Public Buildings Reform Act legislation sponsored by GSA task force members, including myself, Senators Simpson and Boxer.

I will give some brief remarks and then I will yield if any other members attend—and I know some are intending to come—in case they wish to make any opening comments.

This has been a year of considerable turmoil for public buildings. The Administration's national performance review targeted the Public Buildings Service for a substantial overhaul. Then GSA itself undertook a time-out and review in an effort to get a handle on the construction program which was out of control. A "no-net-new" cap was put on the inventory of Federal space.

Next, this committee, acting through the GSA task force, began to reassert its proper authority over the public buildings program. This authority had been dormant for too long. The taxpayer was getting ripped off. Finally, the helm of GSA was taken over by a team that was willing to put its foot down; willing to shake things up. I might say, coming in after a series of 1- or 2-year leadership positions over a period of years where every 1 or 2 years it seemed that somebody was heading up the GSA and then he or she was no longer heading up the GSA—but this has been a year of doing things a little differently at GSA. As far as this Senator is concerned, the more things GSA can do differently, the better off it

will be for the agencies GSA serves, Congressional overseers, the American taxpayer, and GSA itself.

I want to compliment the commitment to change that Administrator Roger Johnson and his deputy Julia Stasch have demonstrated over the past year. I also want to say that there are a number of career staff within the Public Buildings Service with whom we have worked well on reform efforts.

I might say that in the past there have been a number of leaders of the GSA and there have been a lot of political decisions made. The GSA does not have a record that is unblemished. Some of those who have led the GSA in the past, in my opinion, were more concerned with politics than they were concerned about saving the Government's money. Some of them are being investigated by this Senator and this subcommittee. You may hear further from us on that.

But I can only say this: one has to hold his or her nose when looking back at the record of the GSA over a period of years. It is not a record of which we can be proud. That is not to indicate a reflection on the present leadership, which I think is making a sincere effort to do the right thing.

The task of public building reform still looks to me like a gargantuan challenge and the pace seems glacier-like. The past year has seen a good foundation laid down, but it is only a beginning.

Incidentally, I might just comment on something. I don't know anything at all about the matters concerning the present Director of GSA, but I have seen some articles indicating what I call "nickel-and-dime" items concerning his expense account. My intention tells me—having been around here for 18 years—that someone has his or her knife out for him. My guess is that he is probably doing a pretty good job, if that is the case.

I don't like the smell of it when you blow up into a big scandal \$500 of personal expenses—whether it is personal or Federal—\$250 of expenses—that is not what I think it is all about. I just feel that there are some people in GSA who are on the present director's team who aren't necessarily on the team and are talking too much.

We should not be enlarging the overall portfolio of office space, but the existing portfolio needs renewal and cannot be neglected forever. One area of the portfolio which unfortunately must increase is the courts. We need new court spaces. We add more judges as Federal dockets increase. But I question whether the courts' administration is taking public buildings reform seriously enough. GSA's time-out and review identified some \$227 million in savings from court construction alone.

I said in the past that we were building Taj Mahals for judges who were unwilling to tighten their robes along with the rest of us. If \$227 million can be squeezed out of the current program, the Taj Mahal might have been too timid a comparison. I want to hear what type of guidelines are being imposed on court construction. I want to know how we will go at having another \$227 million inflated court construction cost in the future.

We also have before us today the result of GSA's time-out and review program. I want to congratulate the Administrator for undertaking this review. The public buildings program needed to be scrubbed and time-out and review was a good way to start. Howev-

er, I fear that the \$1.2 billion in potential savings identified by time-out and review is going to fade into the fine print. This committee is going to ask about those savings in years to come. I want to know how GSA is going to make those savings stick. I am going to propose that a year from now and in successive years, if need be, GSA produce a time-out and review follow-up, a project-by-project report that will tell us if the savings identified this year have actually been realized.

Finally, the subcommittee will consider S. 1760, the Public Buildings Reform Act. The central component of this measure will be to put the public buildings program on a biennial authorization schedule. This is intended to allow some common sense long-range planning. It is intended to restore some integrity to public buildings management. And it is intended to put an end to the way in which appropriators have circumvented the required authorization process.

S. 1760 has a number of other provisions. I understand that there have been cooperative discussions between Congressional and GSA staff regarding S. 1760. I look forward to continued GSA interest in this measure as I am committed to seeing it enacted this year. I would note that S. 1760 is an attempt to streamline the public buildings approval system. There is considerable sentiment in Congress that we are simply declaring a moratorium on construction entirely. I want to work with the GSA and I look forward to the testimony of our other witnesses.

Deputy Administrator Julia Stasch is here to represent GSA, Gerald Thacker is here to represent the Administrative Office of the United States Courts, and former Congressman Elliott Levitas is here on behalf of the Public Properties Policy Association with comments on S. 1760.

Senator METZENBAUM. Would Ms. Stasch and Mr. Thacker be good enough to come to the table, and then we will hear from Mr. Levitas subsequently?

I think the witnesses have been asked to confine their remarks to 5 to 10 minutes. Please proceed.

STATEMENT OF JULIA STASCH, DEPUTY ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION; ACCCOMPANIED BY KEN KIMBROUGH, COMMISSIONER, AND ROBIN GRAF, ACTING ASSISTANT COMMISSIONER FOR PLANNING, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Ms. STASCH. With your indulgence, I asked Mr. Kimbrough to join me with respect to any specific questions related to the program and specific projects.

Senator METZENBAUM. We are happy to have you with us, Mr. Kimbrough.

Mr. KIMBROUGH. Thank you.

Ms. STASCH. Mr. Chairman, I thank you for the opportunity to appear here today to discuss GSA's fiscal year 1995 capital improvement prospectus program, as well as S. 1760, legislation to improve the process of performing this agency's responsibilities for acquiring, altering, and constructing Federal facilities.

I have submitted a written statement for the record and I would like to highlight its comments in brief opening remarks.

As I said, I would then be pleased to further discuss the proposed reform legislation and Mr. Kimbrough, Commissioner of the Public Buildings Service, will discuss in detail any specific projects about which you have questions.

The proposed projects in the fiscal year 1995 program were all subjected to the scrutiny of the recently completed time-out and review process. Where appropriate, the request for authorization in individual prospectuses has been modified to reflect the results of that review.

As you may recall, the overall results of the review of nearly 200 projects, which included those from prior years, indicated the potential for savings of approximately \$1.2 billion. This agency has appreciated your personal support of this effort.

I would be pleased to discuss in detail our follow-on strategy. You will not have to wait a year for a report on the progress of achieving the savings. We anticipate implementing a quarterly review of the savings and using it as an internal management tool as well as a report to Congress on our ability to capture and achieve the savings.

An important emphasis this year in our program is a continuing investment in our existing inventory through 26 alteration projects, also including 12 complete modernization projects and 26 new design efforts. As you know, we have requested authority to begin a major initiative of CFC replacement and continuing investment in energy retrofit. The construction and acquisition program requests funding for site acquisition and design for four border stations, seven court facilities, and three special purpose facilities, as well as construction funding for one border station, five court facilities, and one special purpose building.

Under discussion with your staff is a new program for which 14 prospectuses have been submitted. This program is designed to permit GSA to access the marketplace for possible alternatives to costly long-term leases. We are eager to demonstrate not only the long-term savings for the entire program but for each project. We look forward to completing discussion of this program with your staff and briefing the committee after that.

Some requirements remain, of course, where ownership is not a viable option, where agency requirements are changing, where a need is short-term or ownership is not cost-effective. In these instances, we propose continued leasing and have submitted five such prospectuses for your consideration.

With regard to S. 1760, this is not the formal Administration position but we have reviewed the legislation and we certainly appreciate its intent. It is well-known that we share and support the goals contained in many of its provisions, but we believe that in some instances—and we have discussed this with your staff—alternate approaches to achieving these goals may be more workable and not result in additional delay in completion of transactions or the significant increase in staff that we believe would be required for both GSA and Congress. As we have indicated, though, we are pleased to sit down and work diligently with your staff to further develop the legislation.

As you know, a number of the initiatives envisioned by the bill are already underway in GSA. These include the initiation of long-range planning, the adoption of a portfolio-wide policy of no-new office space, the assignment of account managers for agency clients, and the assumption of the responsibility to act as a clearinghouse as well as its key thrust, a more strategic approach to asset management through the creation of a portfolio manager for the general purpose space under our control.

On behalf of Roger Johnson, the Administrator of the General Services Administration, I want to thank you for the opportunity to appear today. Commissioner Kimbrough and I are prepared to respond to any questions.

Senator METZENBAUM. Would you care to comment on where Mr. Johnson is?

Ms. STASCH. Mr. Johnson is in Region IV in our Atlanta office. We are undergoing a series of regional planning meetings, all designed to discuss the direction of GSA, to spread that discussion out beyond the senior managers. I, myself, in the past 2 weeks have spent 2 days in Fort Worth and 2 days in Hartford, Connecticut. Mr. Johnson has been in Atlanta, Charlottesville, and he will be going to Harrisburg the end of this week. This has been a heavy travel period.

Senator METZENBAUM. Mr. Thacker, can we hear from you, please?

STATEMENT OF P. GERALD THACKER, ASSISTANT DIRECTOR, FACILITIES, SECURITY, AND ADMINISTRATIVE SERVICES, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Mr. THACKER. Thank you, Mr. Chairman.

If I may, I have a more detailed statement submitted for the record.

Senator METZENBAUM. Without objection, your prepared statement will appear in the record.

Mr. THACKER. I will summarize very briefly in addressing some of the questions you raised this morning about what the Judiciary is doing to participate in the efforts of this committee and GSA in controlling costs of constructing badly needed space for Federal courts.

First, we would like to thank the committee very much for the attention it has given, especially since about 1990 to 1991, to the space needs of the Federal Judiciary. As you pointed out, those space needs are driven exclusively by increased work load, much of which comes as a result of increased jurisdiction Congress has given to the Federal Judiciary, looking to the Federal courts to address many of the matters the Congress feels should be appropriately considered on a national basis. In fact, in the past 10 years, the size of the Federal Judiciary has increased by some 87 percent.

The Judicial Conference of United States, which is a policy-making body for administrative matters for the Federal courts, has initiated a number of actions in the past 5 years that help control the cost of constructing Federal space for the courts. It has developed with GSA standards for Federal courts describing in a functional way the kinds of spaces and types of spaces that are needed

in a modern, efficient courthouse. That document serves as both a list of requirements, but also a standard by which new courthouse projects can be judged.

Second, the Judicial Conference has directed that every judicial district in the country, on a facility-by-facility basis, examine its long-term space needs based on perspective case load growth and staff growth—to assess those needs against current facilities and then to provide that information to both GSA and to the Congress, done in such a way that it is consistently approached across the country and in such a format that the Congress and GSA can use that information to provide a broader context for making its decisions about a building in a particular district.

We have over the past 4 years completed 85 of the 94 districts. By the summer, we will have completed all 94. I think that is an unprecedented effort on the part of an arm of the Federal Government and we hope that it will be helpful to this committee as well as to the Public Works Committee on the House side and to GSA in addressing long-term needs for the Federal Judiciary.

We have participated enthusiastically, I want to say, with this administration of GSA in carrying out some of the reforms that you and Ms. Stasch have already mentioned this morning in examining some of the ways in which the cost of the Federal courthouse construction can be contained. I think one of our joint efforts that you have mentioned previously—and Ms. Stasch mentioned earlier this morning—was to convene a panel of private sector architects and contractors who were familiar with both construction of State courthouses as well as Federal courthouses and Federal projects in general, in addition to their own private sector work, and ask them to look at both ways in which the courthouse program was being managed and contracted for as well as some of the specific space standards that were used by GSA and its general building standards and by the Federal courts and its own design standards.

I think it is important to note that that panel had a number of recommendations that we are both implementing right now both about how to manage the contracting process and administer it as well as the actual space standards themselves. But I think we were encouraged to note that the panel in its written report said that perceptions that Federal courthouses are gold-plated or extravagant, which lead to projects costing twice as much as they should, is simply incorrect.

I think they did identify a number of areas where the standards were overstated. In particular, we found that the acoustical standards we were requiring in various areas of Federal courthouses were too stringent. As a result of the recommendations of that panel, those standards have been revised. In fact, on an average-sized courthouse, it could account for \$500,000 in savings.

The time-out and review process was also one in which we participated. I think significant parts of the savings on the courthouse projects came as a result of cooperative efforts between individual courts and the GSA regional and central office staff are doing those projects. A significant amount of the savings, I think, came from a very close examination of what it was actually costing to build Federal courthouses. I think we were all a little bit surprised to see that it was costing less than had been anticipated.

Senator METZENBAUM. What is the range in the different areas?

Mr. THACKER. An average Federal courthouse of 300,000 square feet built in Washington, DC on a good site would range in hard construction costs from \$145 to \$170 per square foot. Then it would be escalated or de-escalated, depending upon the part of the country in which it is being built. I defer to Ms. Stasch because she probably has more accurate information.

Ms. STASCH. To give you a sense of the range of square foot costs, I have a schedule here of the court projects in the 1995 program. They range from a low of \$104 per square foot to approximately \$187 per square foot. So you can see the impact there of a number of factors: the ratio of parking, which is less costly to build per square foot in a building; the geographic variance; cost of labor; cost of building materials; cost of transportation; and projected time to the midpoint in construction, taking into consideration a conservative estimate of inflation.

So to say that there is truly an average cost—it would be very average and it would not be very informative.

Senator METZENBAUM. Does that range go to track what you would expect in rural areas and what you would expect in urban areas? Or are there some contradictions?

Ms. STASCH. There are some contradictions, but I think that is a general overview. If we were to consider Washington, DC, as the 100 percent location, I can give you a sense of the geographic variables if you will bear with me a second.

Mr. KIMBROUGH. While she is looking for that, I would like to offer one other comment.

The cost of construction has three tiers. It has to do with whether a building is low-rise, mid-rise, or high-rise, with high-rise construction obviously being the most expensive. In fact, if a building is low-rise, then you don't need the infrastructure to support it, so it tends to be the least expensive. Most of the rural courthouses would probably be in the one- to two-story facilities, so it would be low-rise and proportionately the cost would be less. That is also a big factor.

Ms. STASCH. I can give you October 1992 factors, but they will give you a sense of the variations.

We consider Washington, DC, the 100 percent location. New York is at 1.44, so you can see the impact of the trade union situation there, to a large degree, plus the in-town construction, the high-rise construction, which is typically contemplated. Then if you will move to Mobile, AL, the factor would be .89. So you can see that the variation there is very dramatic.

Senator METZENBAUM. Mr. Thacker, did you have anything else you wanted to add?

Mr. THACKER. Mr. Chairman, I have just two more points in response to some specific issues you raised.

To finish up some of the cost-containment issues, I have included in written testimony a list of actions that have been taken, particularly with regard to the standards of the Judicial Conference to effect the cost of construction of Federal courthouses.

I mentioned the long-range planning program as something of which we are very proud—the effort itself of actually having looked at every district and every facility in every district in the

country by the end of this summer, and documented the projected growth and why we feel that it will occur at that particular rate.

I know this committee is aware of a study that was done by the General Accounting Office criticizing several aspects of that planning process a little over a year ago. I am sure you are also aware of the points with which we took issue with the General Accounting Office in their reaching their conclusions, but they certainly had some helpful comments about some of the statistical method we used. In fact, they have done an update of their report, just published this past week in a letter responding to a specific request from the House Public Works Committee to do so. We have submitted that to staff as well.

I think that they were pleased with the changes that we had made in the process. We look forward to their continued help in further refining it. Those were the last two points.

You mentioned that you would not be back next year. This may be our last opportunity before hearing to express the Judiciary's thanks for the support you have given to this program during your time on this committee. We will miss you very much and we thank you again for your help.

Senator METZENBAUM. I appreciate your saying that, but I should add a postscript that I had sort of a selfish purpose because I think what this country needs is a 77-year-old man on the Supreme Court in our State.

[Laughter.]

Mr. THACKER. I am afraid those decisions are made by another branch of Government.

Senator METZENBAUM. Before we go forward with some questions, we are joined by Senator Simpson, who has been of inestimable help and support in our task force efforts having to do with public buildings.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I would have to vote on your confirmation to the Supreme Court, and of course I will be ready to do that. You shouldn't have any trouble with the Judiciary Committee. I would think it would be good. They are looking for a moderate.

[Laughter.]

Senator SIMPSON. Mr. Chairman, I want to thank you for becoming involved in this way with this issue. Even though it is an act that you will not likely see come to fruition, I certainly hope it is and I will certainly help in any way I can. You have set a good marker for us and something must be done here. I speak as a person who has been on the committee all my tenure in Congress—it is absurd that at one time we were at 60 percent of our own ownership, and we were heading to 80 percent, but now we are at 40 percent of ownership.

Let me tell you that nobody around this village is complaining too much because what we have here is a situation where the people out in the land are thrilled to do leasing business with GSA.

It is like a milk cow. They love it. We do inappropriate things here that cost the taxpayers an extraordinary amount of money.

I want to thank you and Senator Boxer, as the three of us try to peel layer after layer of the most extraordinary and bizarre obfuscation about what is up and what can or cannot be done. I know that messing around with section 11(b) is like getting your head ripped off and handed to you when you deal with the House. I think that we should suggest that if they want to mess around with our rules of filibuster, we will mess around with their rules of 11(b).

I commend you for the bill and am very pleased to be a cosponsor of it. I think you and I would both agree that doing these things by polling at the end of a session is certainly something not to do again. We did a \$500 million building or two the last time before we got out of town. I think we can do it all without heeding what OMB requires with its scoring rules.

You and I have looked at how absurd that is and how the scoring rules have driven the issue in a way that no one ever perceived. I am ready to help, and ready to work on all aspects of this.

I think the GSA Administrator is trying his best. He is going to be savaged from down below—which happens to all of them. In fact, in my time, I have seen some figures more pathetic than anything the bard could have put on the stage administer the GSA. I don't see Mr. Johnson as that, but I do see a person who will get ripped to shreds from down below. I think that is happening with some of the recent notoriety that has come upon him.

We have to get back on track. It is not just enough to say no. If there is a better way, I would love to hear it. It is typical of Washington, DC, to tell us continually on almost every oversight activity that there is a better way, but I would like to know what that is. If any of you have a better way, please share it with us. The GSA is not efficient. It is not productive or protective of taxpayer dollars. If this is an Administration of change, this is sure a good place to start.

I thank you, Mr. Chairman, and commend you heartily for your efforts. I will be right in there slugging with you until we get some action on this.

[The prepared statement of Senator Simpson follows:]

PREPARED STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

I am pleased to have joined with our colleague, Senator Howard Metzenbaum, to introduce this legislation.

Our work has just begun by introducing this legislation. As I stated last November, when we introduced it on the floor of the Senate, we are committed to working with the Administration—particularly the General Services Administration and the Office of Management and Budget—in continuing to fine tune this bill.

I would note for the record, however, that the response from these agencies has been disappointing. We hear the criticism—indeed, we predicted their reactions with some success—but we have yet to hear any “constructive” criticism. It would appear as though the phrase from the Reagan Administration: “just say no!” has been taken to heart on this issue.

There is wide agreement that something is wrong with the process our government uses in leasing and constructing the necessary buildings to house our government agencies.

It has become abundantly clear these past 2 years, that the American taxpayer has not been well served. Congress must share a great deal of the responsibility for this.

I commend our Chairman, Senator Baucus, for elevating this issue as a committee responsibility—a priority where, in the past, business was conducted by “polling card”. I am pleased that we no longer follow that rather destructive practice.

We know there is a problem in the system when contractors or suppliers, candidly tell us that the GSA is the best thing that ever happened for their profitability. During past administrations—Republican and Democrat alike—the GSA has become a giant “milk cow” and there is a feeding frenzy of contractors, landlords, and suppliers out there who are getting fat on the cream paid for by the taxpayers.

The current Administration was elected on a platform of “change”. This legislation can be the springboard to accomplish real, measurable, and positive change.

On a positive note—the current GSA Administrator, Mr. Roger Johnson, has the potential, in my view, to be the best administrator in the history of that agency. He has been most cooperative with the work of our task force.

I am heartened by the GSA’s recent “lease conversion” proposal. I think it is sound and that we should support that. I am also heartened to know that the staffs from the Senate and House authorization and appropriations committees have met on this proposal and, at least on the Senate side, have begun to come together on the concept that GSA have a fund created from which they can draw, subject to final authorization and approval in the Senate committees, to convert leased space to ownership.

That is much the same concept as is created in the legislation that Senator Metzenbaum and I have sponsored.

It was not too long ago when the Federal Government owned nearly 60 percent of the building space it occupied. During the past few years, in part because of the scoring rules and lack of long term capital management plans, the government’s ownership percentage has dropped to nearly 40 percent. That, in my view, is wasteful and unacceptable.

We must have a capital budget and a capital plan from which to make sound, long range, planning and funding decisions. The lease conversion proposal is, to some degree, such a plan—at least from a financial perspective.

Our legislation directs the GSA to create a long term asset management plan for our government. Such a concept is not at all revolutionary, Mr. Chairman, and I am confident that Mr. Johnson can make great progress in creating such a plan. Provided, however, he has the support of the Administration and OMB.

As an integral part of a long term capital asset management plan, the GSA will be required to prepare a capital budget. The GSA will consult with the Office of Management and Budget in preparing that budget and long term building plan. GSA will submit that plan to the authorizing committees of the House and Senate every 2 years.

The authorization committees of both Houses of Congress will continue to be responsible for oversight and examination of the 2-year plan. In addition, as with the proposed lease conversion plan that GSA has just recently announced, for the first time in recent memory, the appropriations committees will have a tangible financial plan from the GSA that they can use in making informed decisions during the appropriations process.

It is our intent in this legislation to create a process which will encourage ownership, instead of leasing, and still provide the GSA with the necessary fiscal flexibility to get the best deal possible for the American taxpayer. We can do that without changing the scoring rules, and we can do that within the restraints of the budget agreement.

One section of the existing Public Buildings Act, Section 11(b) has been a giant loophole which has allowed truckloads of pork projects to be shipped all over our country. Billions of dollars for buildings have been appropriated based on 11(b) reports of “need”. At best, there has been minimal oversight by any member of Congress. Our legislation would retain Section 11(b), but reports generated under that section would still have to be included in the capital plan—in a fiscally responsible manner. Any 11(b) proposal would have to be included in the capital plan and funded according to its importance compared with all the other competing needs for public buildings. That would take much of the “politics as usual” out of the process and, in my view, do something to restore faith in the government.

We believe that we have accomplished that goal with a provision in this legislation which requires a 2-year public buildings plan to be submitted for thorough review. This section provides that the administrator, at his discretion, may include an 11(b) project in his long term plan.

This legislation can help get us back on track. However, I would close my comments by repeating an observation I made when I began my comments today: it is not enough to "just say no" to this proposal. I certainly accept the fact that there may be a better way to accomplish the goal of making the GSA more efficient and productive for the taxpayers' dollars. I am waiting to hear constructive criticisms and constructive alternatives. Indeed, an integral part of "legislating" is change—I welcome meaningful amendments to this legislation.

Thank you.

Senator METZENBAUM. Thank you very much, Senator Simpson.

I should point out that this is actually a subcommittee meeting of the Subcommittee on Water Resources, Transportation, Public Buildings, and Economic Development, the chairman of which is Senator Daniel Patrick Moynihan, who has other pursuits this morning. But the ranking member of our committee is with us here this morning, Senator John Warner.

Senator do you have any opening comments you would care to make?

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Very briefly, Mr. Chairman.

I thank you for presiding today. I have a markup in the Intelligence Committee, which takes a little bit of time away from this hearing.

I would like to add my unequivocal support. I had the opportunity to visit with Mr. Johnson extensively in my office here a few days ago, and we reviewed some of his objectives and goals. While he will be attacked, I don't think he would be ripped to shreds because he is too tough. They will endeavor to rip him to shreds.

This is a man who is here in Washington, DC, for no personal aggrandisement or desire to gain fame. He is a hard-headed businessman with a background, not unlike that from which our distinguished chairman came, who likewise has applied such knowledge and skill in his career in the Senate.

I would hope that our committee gives Roger Johnson strong support to try to bring about some of his objectives.

I have looked at the bill. I want to get a little bit more in mind, however, before I join as a cosponsor.

I shall be back shortly if I can manage it.

Thank you, Mr. Chairman.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Mr. Chairman, and members of this subcommittee, I thank you for convening this hearing today before our subcommittee to receive testimony from the General Services Administration.

I will be interested in learning in more detail the GSA's fiscal year 1995 Public Buildings Program. Mr. Chairman, every year the Congress appropriates millions of dollars to this program and I want to make sure the taxpayers of this country are getting a worthwhile investment.

Mr. Chairman, the Administrator of the GSA, Mr. Roger Johnson, initiated the "Time-Out and Review" process to find ways to make the General Services Administration's Building Program more cost-effective. After much hard work in analysis, recommendations for nearly 200 projects were completed and more than \$1.2 billion dollars of savings were specifically identified. The ability to dedicate the \$1.2 billion dollars to other vital domestic needs is a priority today. We must continue to review

these projects and make sure the American taxpayer is not forced to contribute more tax dollars to poorly designed and negotiated projects.

Mr. Chairman, I will be interested in hearing the comments from our witnesses today concerning the lease conversion portion of the Public Buildings Program. I realize that the process of renewing leases continues to be an expensive cost to the GSA and the American taxpayer.

Finally, Mr. Chairman, I am aware of the legislation introduced by my colleagues, S. 1760, the Public Buildings Reform Act. I will pay special attention to the comments of the witnesses today in reference to this legislation. I would agree with the authors of this bill that we must move into a long-term planning approach to meeting the Federal Government's housing needs.

Senator METZENBAUM. Thank you.

I might say that before you came and Senator Simpson came, the Chair pointed out that he has seen some snippets of articles about Mr. Johnson having an attack for some very minor travel bills that total \$500 or so. All I can say is that somebody I would guess in the GSA is finding that he is calling them as he sees them, stepping on some toes of people who have been favored in the past, and that this is an effort to create some personal embarrassment. I would say that the picayune aspect of those items makes me believe that this man is probably doing a good job. When we see here in Washington, DC, such tremendous amounts of problems—\$4 billion in paying the bills—I get the feeling that somebody is out for him.

I associate myself with your remarks.

Senator WARNER. I am not that familiar with the article. This is a man who will keep his chin down.

Senator METZENBAUM. Ms. Stasch, as you know, there have been some jurisdictional disputes regarding public buildings over the past year. GSA could potentially be faced with three different sets of instructions from Congress: one from appropriators and two sets of authorizing language.

GSA should have an established set of procedures to handle such conflicts. Do such guidelines exist now? If not, when will they be forthcoming? Do you have any other comments you would care to make in connection with the several different guideline efforts on the part of Congress?

Ms. STASCH. I am not prepared to fully discuss that right now. I know it has been the source of continuing discussion within the agency, but I would like to come back with a complete response for that.

Senator METZENBAUM. GSA has proposed a new facilities acquisition or lease conversion program. There is considerable concern among authorizers that this program requires a blank check with little follow-up oversight.

What happens if GSA gets the go-ahead on lease conversion, but with two different sets of ground rules from the Senate and House authorizers? How are you going to handle it?

Ms. STASCH. We do not intend to move forward with this program without a single set of instructions. This program will not be effective without consensus among all the appropriate committees about how this is to be implemented. That is why we have engaged at the staff level in intense discussions over the past 30 days or so before this budget is enacted in order to come forward with a complete set of procedures upon which there is full consensus so that

there will not be the case going forward that has characterized the program in the past.

Senator METZENBAUM. The Administration has implemented a no-net-new cap in the Federal office space portfolio.

How will you implement that and how will you track office space being vacated in order that an agency requesting additional space does not violate no-net-new?

Ms. STASCH. The no-net-new concept is portfolio-wide. We have adopted October 1, 1993, as the baseline date for the establishment of the size of the portfolio, and added to it all previously authorized projects, which would add square footage to the portfolio. We intend to work through the cadre of account managers that are being assigned to each of the agencies so that there is an assumption of responsibility on the part of the agencies as well as GSA to adhere to the overall no-net-new.

When we have long-range strategic plans and discussions underway with each agency, we will have a sense of where those agencies are going and tracking, pursuant to the Federal Workforce Restructuring Act or growing in response to new responsibilities provided to them. We will have a sense of where they are going and be able to balance and manipulate those space needs against the space needs of other agencies. We will take it upon ourselves to manage the overall portfolio, but we intend for each agency to assume that responsibility as well, working with us.

We would be pleased, of course, to submit interim reports on the size and downsizing of the portfolio to Congress so that you can have confidence, as well, that we are managing the portfolio in a prudent manner.

Senator METZENBAUM. Do you think you can make no-net-new an honest endeavor?

Ms. STASCH. Absolutely. I believe so.

Senator METZENBAUM. There have been numerous occasions when Federal agencies refused to move into facilities which have been constructed or leased for them. The Federal Triangle project is a prime example. The FCC Portals project is yet another such debacle, which remains unresolved. That is really a travesty. It is an embarrassment.

I understand that the separation of powers prevents GSA from forcing judges to move, but what about Federal agencies? Do I understand that when an agency will not cooperate that the GSA sort of just turns out the lights on a recalcitrant agency? How do you handle it when an agency refuses to cooperate in this area?

Ms. STASCH. I would hope that in the future we won't face that situation again. Once again, we will rely on the account manager concept, which is part of your S. 1760 and is an approach that we heartily endorse and have begun to implement. As a result, we believe that we will not be going down different tracks with agencies which would end up with us procuring space in a place or in a manner that an agency would not support.

We have two objectives here in these activities, and they are to serve agencies as they seek to perform their missions, but also to manage the Federal portfolio in a prudent manner. I don't see that those in any way have to be mutually exclusive. I think working

closely with the agencies we hopefully will not encounter that situation again.

Senator METZENBAUM. The time-out and review identified \$1.2 billion in potential savings.

How is Congress going to know that appropriated funds were returned to the Treasury and that definite planning expenditures were in fact never made? How will we really know that you accomplished something?

Ms. STASCH. The first report is due in May, so there will actually be one or two reports for you this year. You should begin to have some confidence and share it with your colleagues that we are doing what we promised you.

We have put a number of procedures in place so that the \$1.2 billion is not a fantasy. There are significant dollars which have already been captured, particularly in the component related to the leased projects. Those dollars have been captured because of space that we will never have to lease. That threshold of captured savings will be identified in the first report.

We have also put into place in the performance measures for the individuals who will have responsibility for implementing the new construction and renovation projects. We are putting into their performance evaluation measurements related to achievement of these savings. We are also going to be retaining control over the projected savings at GSA's headquarters so that these are not in the control of the project managers in our regional offices.

Senator METZENBAUM. Will you put in a rescission request for currently appropriated funds that were identified as excess in the time-out and review?

Ms. STASCH. We had originally anticipated the excess funds to be rescinded, but Congress chose other areas to capture savings.

Senator METZENBAUM. Tell me about that.

Ms. STASCH. Mr. Chairman, \$126 million of savings, which we had originally proposed for rescission, were instead taken from the Southeast Federal Center project. We would anticipate utilizing funds actually captured from time-out and review to replenish the Southeast Federal Center project, if necessary.

Senator METZENBAUM. I am not quite clear. I am not following you. How was this \$126 million used? Why can't we rescind the money from that?

Ms. STASCH. May I ask Mr. Graf to step to the microphone?

Senator METZENBAUM. Sure.

Mr. GRAF. In the Treasury and Postal Service Appropriations Act of last year we were required to identify projects which would identify savings of \$126 million for rescission. That was the amount that bill was over its mark. Through the time-out and review process, we identified a number of projects for which funding had previously been appropriated that added up to \$126 million; we worked with the Administration in developing that list; however at the final hour, the appropriations committees acted not on GSA's list, but in fact rescinded funds that had been appropriated for three activities at the Southeast Federal Center, a GSA development proposal in Washington, DC.

At the Southeast Federal Center, we have proposed to build a headquarters for the Corps of Engineers, and to build a new head-

quarters for GSA in that location. There were also funds appropriated for infrastructural improvements at that site. The Appropriations Committee took funds out of pieces of each of those three projects and rescinded those funds.

Our current thinking is to take the money we identified in time-out and review savings from a series of projects which total \$126 million and would request reprogramming from the savings we have identified to restore the funds necessary to develop the Southeast Federal Center.

Senator METZENBAUM. Which Appropriations Committee?

Mr. GRAF. This was done during the conference on the Treasury, Postal Service, and General Government Appropriations Act.

Senator METZENBAUM. It is pretty irritating when you try to save some money, but no matter how you try to save it, the appropriators find some way to spend it. I can't blame you for that, but as a Member of Congress, it is an embarrassment.

Mr. GRAF. Mr. Chairman, if I might add, we still feel confident that we have identified the savings associated with those projects. If we can use those funds for significant and worthwhile activities, then the taxpayer will have been served by not spending them for the purposes they originally intended.

Senator METZENBAUM. You are going to replenish the \$126 million so that the bottom line is that there is no savings?

Mr. GRAF. In order to develop the Southeast Federal Center, we would have to come forward to ask for restoration of the \$126 million as a new appropriation. By reprogramming the Time-Out and Review Savings we will then not have to ask for the additional \$126 million. So in our view, that is savings.

Senator METZENBAUM. Those are appropriated funds that were never authorized?

Mr. GRAF. In some cases they were authorized and in other cases they were not, Mr. Chairman. It is a composite of both.

Senator METZENBAUM. Would GSA agree to provide a time-out and review follow-up report next year in order that Congress can track what has happened to the \$1.2 billion?

Ms. STASCH. As I indicated, we are not going to wait until next year. The first report will be in May, then quarterly thereafter.

Senator METZENBAUM. Throughout the time-out and review report, value engineering is noted as a source of savings. In fact, page eight of the report sets value engineering goals of 5 to 10 percent during design and 2.5 percent during construction.

How can you set a goal of potentially 12.5 percent in savings if these areas were not grossly inflated in the first place? Frankly, what is value engineering? We have several different answers and I don't know what that phrase means.

Ms. STASCH. I would like to ask Mr. Kimbrough to give you an explanation of value engineering and how we intend to achieve it.

Mr. KIMBROUGH. Thank you, Mr. Chairman. I appreciate the opportunity to address that question.

Value engineering is a term used in the vernacular to basically ask the vendors—whether it is the contractors or the architect or a combination of the professionals who are being paid—to look at the project from their professional perspective and advise the owners on ways to achieve the original goals, the original concepts, and

maintain the required functionality, but do it less expensively, thereby increasing the value received per dollar spent on the project. The goal is to leave the value in the project, but extract dollars out that don't need to be spent in order to achieve what was planned. During planning and design, it is a collaborative process among the owners, the users, and the architect to identify ways to achieve savings. After the project construction has been awarded, designed, and in construction, the contractors can submit additional value engineering proposals and share in the resulting savings.

It is, in essence, an opportunity to take this money out but not cheapen or lessen what is being delivered.

Senator METZENBAUM. Have you tried it yet?

Mr. KIMBROUGH. Yes. It is done frequently. It is fairly common.

The reason for the shared savings is to create an incentive, for the vendors to develop and submit value engineering proposals. They receive some percentage of the savings that might be derived by this process.

Senator METZENBAUM. What percentage?

Mr. KIMBROUGH. I think it varies—2.5 percent in construction?

Ms. STASCH. Mr. Chairman, 2.5 percent is the savings.

Senator METZENBAUM. They get 2.5 percent of the savings?

Mr. KIMBROUGH. It is roughly 50 percent of the actual savings, but then we get the other 50 percent.

Senator METZENBAUM. It is 50 percent?

Mr. KIMBROUGH. The Government's share is actually 45 percent of the amount saved, which would amount to 2.5 percent of the total cost. As we were saying, between a 2.5 percent reduction in cost—we are dealing with half of a small percentage. In actuality, it is not a big number. That is what I am trying to say. But it is enough that would give them an incentive to do it because it captures their expertise. Once the money is saved, we share the savings.

Senator METZENBAUM. I would like you to give this committee some report on some value engineering savings and the amount the contractor has received. I am aghast at the fact that the contractor gets 50 percent of the savings. I can certainly contemplate in the construction of a building—it wouldn't even have to be a contractor, engineer, or architect in order to figure out how you could effect some savings by a number of different ways.

Mr. KIMBROUGH. I would be happy to do that. Let me make sure that I haven't left some confusion; we are saying that the 2.5 percent was the target for the Government's share of the savings to be derived out of the total construction. So it is not a huge number in the aggregate. I would be glad to give you that kind of a report.

Senator METZENBAUM. I would like to know some specifics, please.

I understand that GSA is concerned that S. 1760 will require prospectus review in every lease negotiated. I am willing to work with GSA on this, but the value of most GSA leases is currently low enough to avoid congressional review. In other words, they don't meet the prospectus threshold. In fact, I remember very well how GSA came into my office and when we tried to eliminate the need for certain space that the NLRB was interested in and that GSA

was prepared to give them, and had actually gone ahead and made a contract without the permission of Congress—I remember the flippancy of the GSA, which was not under your stewardship at the time. They said, "If you don't let us give it to the NLRB, we will just give it to the Ag Department, therefore it will be under your limits of \$1.5 million and you won't have anything to say about it."

That to me was unbelievably crude. If I had had the authority to do so at that moment I would have fired the person who made that response because they indicated that they wanted to figure out a way to get around the requirements of Congress.

Let me ask you whether the value of GSA leases that are below the \$1.5 million threshold—do you think Congress ought to revisit that issue? I know you are concerned about it in S. 1760, but I think that GSA has prompted our concern in this area.

Ms. STASCH. I think that we want to work with your committee to find an appropriate approach to this. We are concerned about it from two aspects. We are concerned from a staffing perspective. We have done some preliminary numbers and it appears that if the threshold itself were lowered from \$1.5 million to \$1 million that compared to the current 15 to 30 prospectuses that we submit annually right now, the bill would require the submission of between 55 and 80 prospectuses. That number would be exponentially increased under the aggregation theory of the bill, which indicates that whenever the aggregate cost of leasing exceeds \$1 million in a single building, a prospectus would be required. We believe, then, that we could be looking at over 200 prospectuses a year.

I think we would like to sit with your staff and find out if that is really what the intent of the bill was or if there is another way we can satisfy your concern. If the concern is to ensure that we do not try to do transactions inappropriately or purely for the sake of "getting around" Congressional oversight, I am confident that we can come up with a mechanism that permits oversight without increasing both GSA and Congressional staff.

Senator METZENBAUM. Ms. Stasch, I have confidence in your integrity. Something tells me that the number of leases that would become subject to congressional approval—I think the numbers GSA has given us are doctored. Would you go back and check them for me, please?

Ms. STASCH. If that is true, I will be very disappointed because I would not have wished to have given you numbers that are anything other than accurate.

Senator METZENBAUM. I don't hold you responsible, but something tells me that the numbers aren't right. Maybe I am wrong.

Mr. KIMBROUGH. Mr. Chairman, we would be happy to supply that for you or for staff. We have from our database very accurate information as to the size of leases related to the quantity, numbers of leases from the smallest right on up to the biggest. We can extract that and provide that to your staff in any sort of cut that would be appropriate.

Senator METZENBAUM. We are talking about \$1 million or \$1.5 million. Is that the annual rent that we are talking about?

Mr. KIMBROUGH. Yes, sir.

Senator METZENBAUM. I would appreciate your supplying that to staff.

Mr. KIMBROUGH. Yes, sir.

Senator METZENBAUM. Senator Simpson, I have been taking a lot of time. Please, proceed as long as you want.

Senator SIMPSON. Mr. Chairman, I'm listening intently, too, because we are both on the same course. I want to say that the GSA has been working more closely with this committee than ever in the past. That is very good. We are pleased that GSA is adopting some of the policies suggested by the chairman and myself and Senator Boxer, particularly on long-range planning. That, too, is good.

But if we could have detailed written comments about this legislation from the GSA, please—not just that there are alternatives or that you don't like this—I would like to hear some detailed written comments. All of you have mentioned better alternative ways to pursue some of the goals that we are trying to achieve here. I would like you to do that, if you would, please, for this subcommittee within the committee.

Unless you have something you want to share with us today; if you have some specifics, this would be a great opportunity to share them with us.

Mr. THACKER. Senator Simpson, while Ms. Stasch is gathering her thoughts, perhaps I could comment on two aspects of the bill that I go into some detail in throughout our written testimony. Again, in a very general way, it seems to us that the bill is very much on the right track, particularly in terms of looking at a much broader context for the long-range planning aspects that you have described.

Our concerns are quite minor in relation to that much broader bill, but they deal with a section of the bill that has to do with developing long-term housing plans, which we are quite willing and able to do. Our major concern deals with the section of the bill that talks about a 5 percent reduction in the amount of space using the year of enactment as the baseline.

As we have been discussing earlier, this committee has authorized quite a bit of additional space for the Federal courts over the past 5 years, much of which is now beginning to come on-line. It would be extremely difficult for the Federal courts, which I believe are covered under this section, to actually accomplish a 5 percent reduction if fiscal year 1994 were considered the baseline.

That is again a very minor point. We had one other point mentioned in my testimony about perhaps some clarification of some wording on another part of that section.

We are very pleased that the committee has taken the direction it is taking, particularly in terms of looking at more than just a single year's requirement at a time.

Senator METZENBAUM. Mr. Thacker, I do appreciate that, but you have used a term which is not of your origin, but is slowly eating up the United States, and that is the word "baseline". The baseline budgeting is so absurd now that when we tack something on the board we say that the baseline shows this and if you went to zero budgeting you would have some sense in what we do. But it is like dealing with Medicare and Medicaid. One of the problems this year is that Medicare is going up 10.5 percent and we are going to say

that we are only going to allow it to go up 8 percent. That is described as a "cut" to the American people.

Everybody sits around and says, "Isn't that terrible? They are cutting Medicare." How is an 8 percent increase described as a cut? That is what you get when you play baseline games. It is absurd. It is destructive of the budget.

Then, I am on the Judiciary Committee. Your predictions of future staff growth for judges and attorneys is optimistic. In some cases, the proposals saw predictions of as many as eight to ten new judicial vacancies in a single district court. Senator Biden and the committee have been cranking out nominations, but even at that record, there is no way possible for those predictions to be met. That is another part of the problem. Who wants to challenge the courts having appropriate accoutrements and accommodations for the judges? That is certainly important but this is just typical of every other part of the system.

I think there is very adequate—even with a 5 percent reduction—preparation and acknowledgement of what we are doing, based upon real life, which is how many judges we are approving and how many are authorized under the law. How many of the accommodations are for judges and how much for staff and clerks and on and on and on?

We don't need all that.

Let me go back to a question about value engineering. I see my good colleague zeroing in on that. I don't know that I understand that, either. I don't know if I would if you kept going on it, but I think I might understand some of it.

Is that a procedure or a tool for saying that the GSA blew it, that past specs and requirements were wasteful, and accordingly that GSA is reviewing those specs and through professional consultation will apply more realistic specifications and requirements? Is that what value engineering is to a layman? I have heard the technical aspect of it and I don't think GSA would ever want to admit that.

You talk about a minimum type of return to the contractor under that theory of percentages. I gather, then, if you had a \$100 million building, then 2.5 percent would be \$2.5 million, the contractor then gets \$1.25 million. Is that the way this works? Did I miss something here?

What is the purpose of that unless you overshot your goal and had to get realistic? One of the things this group of three has found is that these figures are often just pulled from the air, and then with magnificent arcane discussion there is suddenly flesh plastered on this skeleton and we all just sit there and stare. How did this come to pass?

"Well, you see, the ground under there has an impact ratio of 44 pebbles of gravel for every half a foot of watered earth" and on and on it goes into the atmosphere. We have to sit and listen to that.

I know that there are a lot of people doing that kind of work, but you will always be able to fog us. We have other things to do.

Give me a thought on that. That is very frustrating for us to deal with.

Ms. STASCH. I understand your frustration. I would hope that you would sense from the initiatives that we have undertaken since we have been here that it is not our intent to fog you with—

Senator SIMPSON. You are not, but it is going on underneath and it just keeps going on. I have never seen more forthcoming in all administrations—in the Reagan Administration it was a fog-bound agency. In the Bush Administration it was a fog-bound agency. And I think you and the present Administrator are trying to bring it out. You are being very forthcoming—all of you. I am just saying that when it just is encrusted down below, you are not going to penetrate it either. They are going to slide some stuff past you if they can. They have been doing pretty well through 15 years of my experience here.

Ms. STASCH. I would like to respond to a couple of your concerns.

First of all I would like to comment on value engineering. Value engineering is a tool. It is not something that now the Federal Government has just decided to pluck out of the air and apply to its projects in a way to get back from inappropriate budgeting. Value engineering is a tool that is utilized throughout the industry. As a matter of fact, project managers and owners would be acting in an imprudent manner if they did not value engineer at every stage of a project.

The benefit of value engineering is to bring into play additional sets of eyes and expertise. Value engineering has been used in projects that I have been involved in and Mr. Kimbrough as well, before we came to GSA. Value engineering took place at least two times during the design effort where a construction consultant on-board would take the plans and specifications being developed by the architect and review them in-depth to say, "Here is an alternative way to do something that you, the architect, are putting into the plans. Let's do it now so that before they get to the bidding stage we have a set of plans and specs that have benefitted from both the eyes of contractors and architects."

It actually then has continued benefit when you get to the construction stage. The plans then are the products of architects and engineers, but once again, they haven't been put to the test in the marketplace. So when you have bidding contractors, they as well can bring to the table different ideas.

I would like to comment on one other thing about the budgeting.

In our opening statement for the time-out and review report, we indicated that what we discovered within GSA there was a mode of working within a comfortable budget perspective. A comfortable budget perspective is one that says, "Don't let GSA ever have to come back and ask Congress for more money, so let GSA take into consideration every possible contingency, no matter how remote." The result is a construction budget that is in excess of what is necessary, and that is what has happened.

That is not our intent and that is not the way we want to operate. We want to challenge the people within GSA to budget extremely tightly and narrowly. Then we may from time to time have to ask your indulgence if we have actually budgeted overzealously if we have to come back and ask for additional money for unforeseen conditions.

Senator SIMPSON. Thank you.

Has there ever been a building that was ever constructed within the bounds of the original budget? I have been here for 15 years and have never seen one. If you can give me the list of when one of these critters started and ever came in without one single addition, without some—it is my experience that they go up 200 percent or 150 percent and all we do is sit and watch that process take place.

I would like a list of the past 15 years of every single building constructed for the United States of America—whether for ownership or lease purposes—that came in exactly on or less than what was originally estimated.

Ms. STASCH. Actually, we have anticipated that sort of request. Mr. Kimbrough's organization is putting together such a—I hesitate to use the word "baseline" because it is not appropriate, but I think that is what we called it—a baseline understanding of our project performance.

Senator SIMPSON. But please don't load it up too much with future dollar figures and out-into-space figures and inflation figures of the year—just try to stay within real life so that we can look at it.

Ms. STASCH. Well, if you are asking for historical data, that is what you will get.

Senator SIMPSON. I know I will get a lot of data, but I would like to know if anybody ever hit one right, that the Government then knew they were going to have to pay that, or whether we paid 100 percent more or 200 percent more or 300 percent more while the lessors were licking their chops. When somebody wants to build a building in real America for the Federal Government, the light in the eyes of realtors and developers within the community is like a laser because they know they are going to eat off of them forever, build the building, and get money—a lot more than they could ever get doing that for an individual person within the community.

That is the way it is out in real-life America.

Ms. STASCH. There is a building that I happen to know of off the top of my head that could be the first line in the report.

Senator SIMPSON. One building?

Ms. STASCH. I am going to say from my personal experience that before I came to GSA I was president of a real estate company that built a building for GSA. It was on time, under budget, and there were no outstanding claims at project completion.

Senator REID. We can't have any of that going on.

Senator SIMPSON. I am glad that my patriots have come because I can see that they are going to swoon at knowledge like that.

Ms. STASCH. The swooning nature of it was probably noted by former Administrator Austin when he came out and actually made note of the fact that it had probably been 20 years since that had occurred. So that—

Senator SIMPSON. The first time in 20 years that had occurred?

Ms. STASCH. Perhaps he was doing it to flatter us, but—

Senator SIMPSON. Well, he has had 20 years experience and I have only had 15. I have never seen any of them and he has seen one, so something is not right in real life.

But I admire what you do and you have been very forthcoming to us—not just here—and I thank you for that.

Thank you, Mr. Chairman.

Senator GRAHAM [assuming Chair]. Thank you, Senator.
We have been joined by Senator Reid.

Senator Reid, do you have an opening statement?

Senator REID. Mr. Chairman, I would ask permission of the committee that this be made a part of the record and I have a couple of statements I would like to make.

Senator GRAHAM. Without objection, your prepared statement will appear in the record.

**OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR
FROM THE STATE OF NEVADA**

Senator REID. Mr. Chairman, in southern Nevada, we have a tremendous problem. It is by far the most rapidly growing part of our country. We expect to get two new judges next year. The case load the judges have in Las Vegas is 50 percent higher than judges around the country because of the tremendous population growth and quite frankly it is a high crime area.

If the figures are carried out now that GSA does for renting space, in the next 20 years, that will have cost over \$200 million. We are spending right now over \$10 million a year for renting space there. For a number of years, I have wanted to consolidate and bring the Federal agencies closer together.

A few years ago—about 6 years ago—GSA bought a building for Federal agencies in Nevada. Even though it was the right thing to do, it was the wrong building to purchase. I don't know if you are aware of it, but that building had some defects in it and they wanted to move the United States Attorney there and they couldn't because the floor wouldn't support books. This is a brand new building. This was a building where they had to be careful who they put in there because it wasn't safe to put anything heavy on some of the floors.

I believe that you won't find a community anywhere in the United States that has done more to save the Federal Government money for a Federal complex. We originally had the city that wanted to donate some land downtown and for a number of reasons that did not go forward because the county stepped in—they are building a new county complex there—and they agreed to give the Federal Government up to 9 acres of land for a Federal complex. That saves a huge amount of money and they are willing to do whatever they can. They will build the building, lease it to us, whatever the case is.

I am only projecting some of the problems that we have there to say that this year I need to get some design money for that Federal complex that we need to build in Las Vegas. It wasn't because of the problems we had in the city in the budget this year, but I am going to work to make sure that it is in the appropriate legislation so that we can go forward with the design.

Each month that goes by that we are removed from constructing this facility means that the Federal Government is losing money. Not only that, the inefficiency is significant.

I wanted to alert everyone to that. I am going to do what I can to make sure that the design money is back in the budget.

Ms. STASCH. Thank you very much.

Senator GRAHAM. Would the gentleman yield?

Senator REID. I would be happy to yield.

Senator GRAHAM. Both Senator Reid and myself represent two of the faster growing States in the country. A continuing challenge is whether you build for the needs that exist today or you build for the needs that you can, with some confidence, predict are going to be there 5, 10, or 20 years from now.

What is the GSA's standard in terms of—let us use the example of the Federal building in Las Vegas, a very fast-growing city. Should the building be designed to meet current needs, or what degree of projection of future needs would the Department recommend be incorporated?

Mr. KIMBROUGH. If I may, let me divide the conversation between general purpose office space or special purpose space, such as courts, because I think you would approach it differently. They have different parameters.

First of all, for general purpose office space, you would presume that there are more options in the private sector that you could respond to either to lease or acquire an existing facility to augment your needs if growth took off and you needed additional Federal space. It also makes a big difference whether there are available sites within the area where you are expecting to have your facilities located.

So there is a sense of making sure that you have options available. In office space, you generally feel like you will have them. If not, you can acquire a site. Generally, there are older facilities that come on the market that have been torn down—there are opportunities that exist. For the foreseeable future, you can be assured that there is some opportunity to handle the office space requirements.

In a special purpose building, such as courts, that is not a safe assumption. What we have been doing currently is to make sure that we could satisfy the space requirement—that was on the horizon for 10 years—while basically planning for the 30-year requirement. In most cases, this means acquiring a site that is big enough for at least two buildings, one now and another building to satisfy the growth that would come subsequently.

If it is a situation where it is land-locked and the site is very tight and there are no other opportunities to acquire an adjacent site, it might dictate that you would build for the 30-year requirement today, build it out to the 10-year court use, and then try to get other Federal tenants to occupy the growth space. So the approach would be to consider what you needed to do for the long range, because otherwise you may back yourself into a corner and have considerable expense to redo something that you had already spent a good amount of money to do in the first place.

Senator GRAHAM. So in applying those criteria to Las Vegas and a facility that was primarily designed to serve the needs of the Judiciary, you would look to build a facility that would meet the needs for today plus 10 years, but have the previously ascertained growth capacity to meet current needs plus 30 years. Is that right?

Mr. KIMBROUGH. That is correct.

Senator GRAHAM. I am sorry for the interruption, Senator Reid.

Senator REID. That is perfect. That is the line of questioning I wanted to develop. You did it much better than I could have.

The other thing I want to say—and this is just a general statement—I think that we should save all the money we can in construction. I think the new Administrator has done a good job with that. But I want to make sure that the buildings are still something we can be proud of. I can remember going to Warsaw, Poland—and of course, it was destroyed during World War II by the Nazis. Afterwards, when the Soviets took over, they came in and constructed Government buildings. They all looked the same. They are all ugly. They are all cheap. I want to make sure that we maintain a standard of high quality.

In Las Vegas, we only have two Federal buildings that we refer to as Federal buildings. One of them is very old, the Old Post Office Building, and now the Foley Federal Building. They are both very nice buildings, very aesthetically pleasing, and have been very functional. Even though we want to save money and make sure that contracts come in as low as they can, I want to make sure that the Federal buildings are something we can be proud of.

Ms. STASCH. I appreciate that. I want to give you a response.

You should continue to have confidence in our desire to have design excellence within an appropriate amount of dollars. We are lucky to have within our own portfolio of architects working for us the finest architects working in the country. There is prestige working on the Federal portfolio. If you look around, particularly at the court buildings under design right now, I think you would be very proud.

I think in the court panel that was convened by the AOC and GSA, the architects themselves said that we did not need to spend as much money as we do. These are the finest architects that are working. So when they concur and they also know that their name will be on the building, I think we have a marriage there that will serve both needs.

Senator REID. That is all I have, Mr. Chairman.

Senator GRAHAM. Thank you, Senator.

I have relieved Senator Metzenbaum temporarily and I have not made an opening statement. I would like to make a few comments and then ask some questions, if I could.

Senator REID. I appreciate your letting me come before you.

Would you excuse me?

Senator GRAHAM. Those are somewhat contradictory statements that you made?

[Laughter.]

Senator GRAHAM. The answer is that I appreciate the first and yes to the second, with sadness.

OPENING STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. I wish to join in the remarks of Senator Simpson my commendation for the new level of energy and commitment that your team has brought to GSA. I have not had as much experience with GSA as some of my colleagues who have been in the Senate for a longer period of time, but I have been impressed with

the confidence and commitment of the team that is currently in charge. I wish to commend you for your public service and your interest in seeing that Federal buildings serve the diversity of purposes of being an important aesthetic statement in the community as well as serving their functional needs for the agencies, particularly for those who are the users of those agencies.

As we discussed recently in my office, I have been concerned about the delays in Federal construction, not just within GSA but within all the Federal agencies that have Federal construction responsibilities. While I was Governor of Florida, we instituted a tracking system in which we followed each State-funded project based first on a line of expectation of when certain milestones—such as site acquisition, commencement and completion of design, commencement and completion of major segments of construction—would be completed and when the building would be available for occupancy and then apply against that line of expectation the actual progress of the project. The purpose of this was to determine, on an exception basis, which projects were falling behind schedule, then to try to determine why they were falling behind schedule and what could be done about it.

Over the past several years, we have attempted to do the same thing relative to Federal projects within the State of Florida. I might say that this has been a tedious process because apparently the agencies who are responsible don't keep this kind of information in an easily compatible replicable format. Also, there does not appear to be at the top level of the Federal Administration—and I would define that as being the Office of Management and Budget—an effective oversight of what is happening with these projects.

Finally is the difficulty of determining why projects are slipping and institute a remedial process to correct them.

One of my immediate concerns is that the problem seems to be getting worse. I don't know if you can see this chart, but these are all the Federal projects in the State of Florida beginning in March of 1992. In March of 1992 there were a total of \$1.1 billion of Federal projects authorized in the State of Florida, of which \$155 million, slightly more than 10 percent, were in the category of "delayed", that is, they had fallen behind one of their milestones of completion.

In the latest survey that we have done, which was March of this year, 2 years later, the total amount of authorized projects has increased to \$1.5 billion, but the total amount of projects delayed as grown to \$524 million, or 34 percent. So there has been a three-fold increase in the number of projects which are behind schedule in our State.

I don't know if there are peculiar factors that make Florida aberrant and non-representative of the Nation as a whole. I am not aware of what those would be. I am concerned that if this is the nationwide pattern that not only are substantial public needs going unmet by virtue of the construction projects not being completed on schedule, but recognizing that every million dollars of construction funds not expended represents several jobs that are not created, it is a significant economic factor for the Nation and for the communities involved.

I would hope that GSA would continue the initiatives and that there will be an aggressive step taken to deal with the issue of delayed projects in determining what can be done to rectify them. I have introduced some legislation, S. 1959, which among other things places a new responsibility on the Office of Management and Budget to assure that there is comprehensive oversight of the Federal construction process.

I have discussed with you, Ms. Stasch, the details of the computer tracking system that GSA is developing. I think this could eventually be adapted as a system that could be utilized for all of the Federal agencies that have construction responsibilities.

The bill also has an enforcement mechanism. I might say that this is a mechanism that we have used in Florida since the early 1970s. It essentially states that any funds that have been appropriated but not spent for their intended purpose—whether that intended purpose was site acquisition, design, or construction—within 2 years after being appropriated would revert to the Treasury. It was our experience in Florida that when agencies and those who look to the agencies for specific purposes recognized that their project was in jeopardy because of this delay that that created a motivation to find out what was causing the delay and try to deal with the problem, a motivation that typically was not there if there was not that jeopardy to the project.

I have reviewed this legislation with members of this committee, although the legislation, as introduced, has actually been referred to the Governmental Affairs Committee, since it has Government-wide impact. But I will be considering the possibility of offering at least portions of this legislation as an amendment to S. 1760 during further consideration of this legislation.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, I am pleased that the committee, under your leadership and that of the task force comprised of Senators Metzenbaum, Boxer and Simpson, has focused so much attention on the Federal building construction process during this Congress.

Our committee's revitalized interest has coincided with the arrival of Roger Johnson and Julia Stasch to direct the General Services Administration.

I have been greatly impressed by their stewardship of GSA and their work to improve the efficiency of building construction and leasing operations.

Quite simply, Mr. Chairman, the Federal construction process has spun out of control.

This lack of control reaches well beyond GSA's projects—it is endemic throughout the Federal Government.

For over 2 years now, my office has been tracking construction projects in the State of Florida which are under the jurisdiction of Federal agencies.

We have encountered widespread and increasing delays, and, perhaps worse, constant rationalization of these consistent patterns of delay.

Construction management personnel appear to spend so much time revising and justifying their ever-slipping construction schedules that they have lost their focus on keeping the projects on-time in the first place.

This chart clearly demonstrates the trend, at least in Florida. Whereas in March 1992, 10 percent of the projects we tracked were listed as "delayed," our most recent study found that fully 34 percent of the \$1.5 billion in Florida Federal construction projects had slipped behind schedule.

Florida Federal Construction Delays

Increasing Pattern of Delays

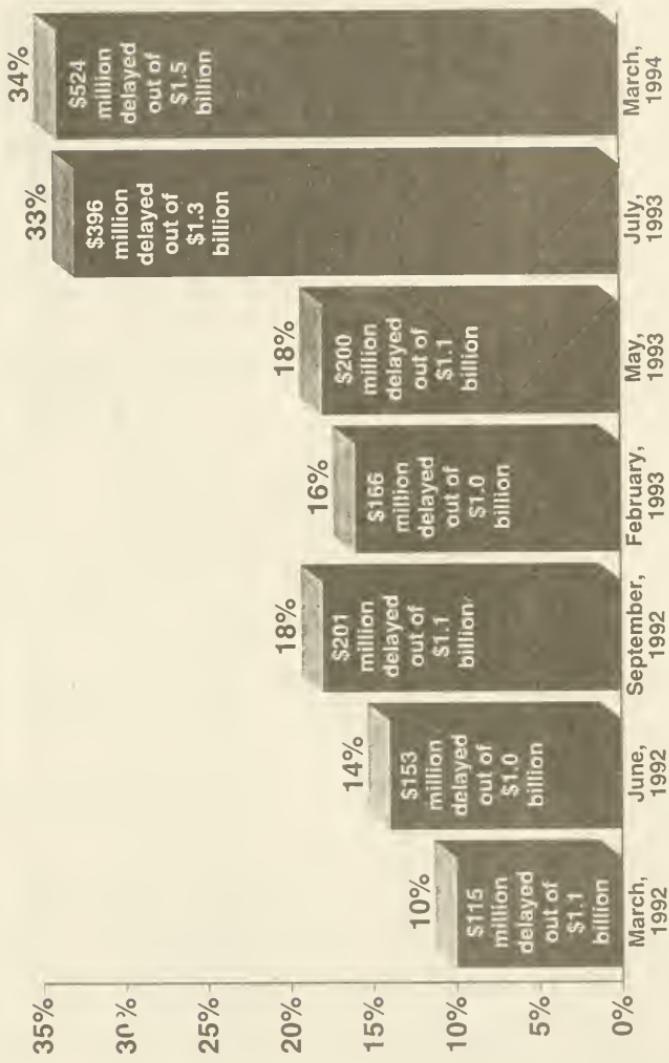


FIGURE I

Office of Senator Bob Graham
March 25, 1994

- (1) Boxes in grey shading indicate actual dates
- (2) Boxes above the grey shading indicate estimated dates
- (3) Figures in parentheses () are revised estimates set by agencies

FLORIDA PROJECTS							
Location/Description	Date Authorized	Date Funded	Amount Funded To Date	Design Start Date	Design Complete	Site Acquired	Construction Start Date
Fl. Myers New Federal Bldg/Courthouse	5/21/91	FY92	\$32,370,000	1/14/93 (4/1/94)	1/92	5/14/93 (8/15/94)	\$32,607,000
			2/12/92		6/22/93		5/1/95 (8/15/96)
Jacksonville New Courthouse	1/27/94 (site)	FY94 (site)	\$6,070,000	1/95	1/97 not yet sched.	6/97	\$83,375,000
Lakeland* New Federal Building	9/15/88	FY89	\$6,000,000	1/31/91	3/19/92 not yet scheduled	2/24/92 (9/27/93)	\$4,297,000
Orlando** Consolidation of federal agencies at Airport	10/92	N/A	Below Prospectus (\$1,650,000)		N/A not yet scheduled		8/7/93 (12/26/94)
Tallahassee** New Courthouse	5/21/91	FY92	\$5,586,000	8/29/92	2/16/93 not yet scheduled	10/15/91 6/5/92	\$39,200,000 11/1/95
							FY92 Design

FLORIDA PROJECTS										
Location/Description	Date Authorized	Date Funded	Amount Funded To Date	Design Start Date	Design Complete	Site Acquired	Construction Start Date	Total Cost	Project Complete	Appropriation Bill/Public Law
Tampa*** New Courthouse	2/5/92	FY92 FY93 FY94	\$74,688,000	12/31/92 (6/1/94)	1/31/94 (6/1/94)	10/1/92	6/15/94 (9/15/94)	\$57,134,000 (\$74,688,000)	6/30/96 (9/2/96)	FY92 Design FY93 Site FY94 Const.
DELAYED						6/8/93				

* Lakeland project was recommended for cancellation as a result of GSA's Time Out and Review process. It has not yet been deauthorized by Congress.

** GSA has not set requirements for the Orlando project yet, so no tracking information is available.

*** Construction funding has not been requested or approved by Congress for the Tallahassee project. Awaiting explanation from GSA

**** Tampa project delayed by changes recommended by Time Out and Review process

That is why I was so pleased to learn of the computer tracking system GSA has under development, and I hope Ms. Stasch will describe that during her remarks and give us an update on its status. Following is information on the status of GSA projects in Florida.

I have also introduced legislation (S. 1959) which will require greatly enhanced management of all Federal construction projects.

The centerpiece of S. 1959 is to put the "M" back in OMB—to require the Office of Management and Budget to oversee the entire Federal construction process and make it more efficient.

I have discussed with Ms. Stasch the details of the computer tracking system GSA is developing, and I think it could eventually be adapted and used by OMB to maintain current information on the status of all current projects.

Having that information available is essential to successfully managing the process.

The bill also has an air-tight enforcement mechanism: any funds which have not been spent on their intended purpose 2 years after being appropriated will revert to the Treasury.

Enactment of that provision could be a great help for committees like ours trying to reinstitute a rational planning process to the construction projects under their jurisdiction.

As the Environment Committee provides legislative direction to the tremendous reform effort already underway at GSA, I suggest my colleagues remember that myriad Federal agencies are responsible for their own construction projects.

Because it would affect construction projects government-wide, S. 1959 has been referred to the Governmental Affairs Committee. I hope the members of this committee will consider cosponsoring that important bill.

Furthermore, as the committee continues its review of S. 1760, I hope we will find that elements of my bill would complement the efforts of the task force and make appropriate additions to S. 1760.

Now, Mr. Chairman, if I may quickly turn the committee's attention to one more issue, that is the recognition GSA gives to those people who help create our public buildings.

Currently, each new Federal building recognizes the President of the United States and the Administrator of General Services either on the cornerstone or a plaque in the lobby.

It is my view that we should also recognize the many men and women who actually build these public structures—the carpenters, electricians, masons, and other craftspeople who turn designs into reality.

I have discussed this idea with Ms. Stasch and Mr. Ken Kimbrough, Commissioner of the Public Buildings Service. Ms. Stasch told me that GSA supports the idea and is preparing to implement it.

I will report back to the committee on the progress of this matter.

I also welcome any of my colleagues who have suggestions to share them with me or directly with GSA.

Once again, I want to thank the Chairman for scheduling this important hearing and look forward to receiving the testimony of the witnesses before us today.

Senator GRAHAM. Ms. Stasch, could you give us a status report on what GSA is doing with its tracking system and what your expectations are in terms of being able to reverse this increasing percentage of projects that are delayed?

Ms. STASCH. Are those all GSA projects?

Senator GRAHAM. No. These are all Federal projects. They include VA projects, DOD projects, Corps of Engineers projects, as well as GSA projects. Since our system is based on a project-by-project identification, we have the ability to break out those projects which are GSA and do the same analysis.

Ms. STASCH. I was just horrified at the increase there, but I would hope that within GSA we have the ability to pull that out ourselves. I do want to reiterate that we share your concern about project management, about aggressive project management. I am going to ask Mr. Kimbrough to give you a status report on the tracking system.

Mr. KIMBROUGH. Mr. Chairman, after our meeting, we did go back and try to examine our knitting and we discovered two things that shed light on it.

First of all, we do have an agency-wide tracking system, but we discovered that it was used largely for capturing information after the fact so that it wasn't the system being used to manage the actual construction. It was useful for reporting to get information into the database, but not useful for us in terms of tracking.

The second part of that is that we discovered that our regions—and in fact the construction managers in the regions—in fact did have systems. They tended to follow whatever the general contractor or construction manager that was hired had proposed. So what we found was a large—

Senator GRAHAM. What he had proposed in terms of the time frames?

Mr. KIMBROUGH. If we had hired a general contractor or construction manager, they usually came to the project with their system. So we were using the system that was brought to the project by the professionals we had hired to actually build it or run it. What that meant was that there were a large of number of different systems that made it difficult to roll them up.

After we discovered this, we tried to develop a sense of whether there was one system that seemed to be the predominant one in use. We have a sense that there is a dominant one and we are now trying to examine how we could in fact effect a single-use system throughout our projects. If we can do that, then we will have the capacity to roll up the information in real time and have real tracking information.

So the good news is that projects are being tracked, but not on a system that would let us, nationwide, roll it up. We are trying to address that as we speak to come forward with something that would roll up and could be used across our projects. We are at the discovery point now and not ready yet to make a recommendation, but I feel fairly close.

Senator GRAHAM. I would just encourage you not to make this into a Christopher Columbus project. This is not a unique situation. I indicated that our State has been doing this for almost 20 years. There are systems that are available many other places that can accomplish the purpose of providing a means of effective information-gathering and then management of that information in terms of maintenance of schedules for construction projects.

Mr. KIMBROUGH. I noted that and I am going to make sure that we do a little homework to find out what lessons were learned by Florida that might give us information for our process.

Senator GRAHAM. I am surprised and saddened by the fact that something as obvious as this that has been going on elsewhere for a long time has just recently come to the Federal Government. Weren't agencies that had buildings that they were depending on to meet their own program needs beating at somebody's door to try to determine whether the project was on schedule and was going to be delivered as anticipated? And how were those requests for information responded to?

Ms. STASCH. I think you have identified something which is an endemic problem within GSA, and that is the very narrow transac-

tional perspective that we have. I am confident that if we had a query about a single project we could answer that question. But we don't have in place the overall agency-wide or region-wide tool to use in management of our projects. That is what I think we need to give you the confidence that we are managing the projects—not day-to-day, "Who is on the site? What contractors are on the site?"—but overall whether the milestones are being met.

I think that we need to move from the narrow perspective to the broader perspective and then we will be managing it in a way that will provide confidence.

Senator GRAHAM. Will the tracking system that you are going to develop provide information on which projects are behind schedule and what component of their progress, from site acquisition to completion of construction, is the cause of the delay?

Ms. STASCH. Let me assure you of one thing: we are not going to develop the system. We are going to buy the system. The needs for tracking are not unique. There are off-the-shelf systems that Mr. Kimbrough has alluded to. This is being done every day in major companies. We do not need to create a custom application.

Senator GRAHAM. However you secure it—

Ms. STASCH. It will address the very specific milestones, at a minimum, that you have identified in your bill, but it will actually be more comprehensive so that we could pick up additional information if need be.

Senator GRAHAM. Then what are your management plans after you have the information in order to try to take remedial action to rectify the causes of delay?

Mr. KIMBROUGH. I am familiar with the kinds of tracking system that you are making reference to. Like Ms. Stasch, I, too, come from the private sector. I have 25 years of construction and project management. So I understand how we use these and their value.

We would propose to establish milestones for each project—whether they be conception or planning or design or start of construction or construction completion—and track the actual progress against the established milestones. So on an exception basis, you could get an exception report that would indicate that there are delays at any expected milestone for any project.

I don't want to indicate that that is not happening today. I am just saying that at the headquarters levels, we are not able to do it because different systems are used in the field on each project. There are probably something in the range of 400 projects in some active stage of design or construction at any point within GSA, so it will be a huge undertaking to migrate these onto a single system, but we are taking a look. We are trying to figure out how to do that now. Again, as Ms. Stasch mentioned, we plan to use using off-the-shelf products so that we don't get trapped into the issue of some proprietary product that would only be a Government product.

Senator GRAHAM. What is your time frame for having this system operational?

Mr. KIMBROUGH. Operational?

Senator GRAHAM. I would define "operational" as being that our office could call a person and say, "I want to get this month's

update on the status of Federal construction projects in Florida," and that would be available on a timely basis.

Mr. KIMBROUGH. I am certain that within 12 months we could have a system in use. I think prudence would say that you would want to migrate onto the system as opposed to a process whereby you would go back to an existing project and try to convert all the information and data back off another system that is in use. So I would expect to set a time frame that within 1 year we would have a system that we would have in place so that all new projects could start with that system and then over a year or two you would expect the majority of everything that you were managing could be on that system. That is a prudent approach that would allow you to go forward with the right tools. As projects start, you would start them onto this new system.

Ms. STASCH. I will work with Mr. Kimbrough to value engineer that time table.

Senator GRAHAM. I had also in my opening statement some comments about another issue we had discussed, which was the issue of recognition of craftsmen. I have been very impressed with the examples you see in some other countries and occasionally in the United States, such as at the Empire State Building, in which the people who actually through their labor constructed the building are given some recognition. It would seem to me to be an appropriate thing, especially appropriate in public buildings, to give that kind of recognition to the American working men and women who have contributed to the construction of the building.

I am pleased at your receptivity of that idea. I hope that is one we can move forward.

I might say that I take a different job every month. My job for last month was working as a mason on the construction of the Federal prison in Florida. That is a project which the contractor tells me will be delivered on or ahead of schedule and within budget. That will in large part be due to some exceptionally capable and dedicated workmen and women who are making that project move from design to reality. Recognizing those people for their effort I think would be in the best American tradition of paying special honor to individual excellence and accomplishment.

Ms. STASCH. As you know, we did indicate that we were receptive to it. We have now moved to support of that initiative. We have been investigating different approaches to it and will be back to see you soon with some proposed mock-ups and cost ranges.

Senator GRAHAM. Good. Thank you very much. I might say that working just one day doesn't qualify you to be on the plaque.

[Laughter.]

Senator GRAHAM. If this panel would accept our appreciation, you are excused.

The Chairman of the full committee, Senator Baucus, has submitted a statement which will be made part of the record at this point.

[The statement referred to follows:]

PREPARED STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

I want to welcome all of the witnesses to today's hearing. We will be reviewing the General Services Administration's FY 1995 public buildings program, the final time-out and review report, and hear testimony regarding S. 1760, the Public Buildings Reform Act.

FY 1995 PUBLIC BUILDINGS PROGRAM

The FY 1995 budget contains over \$3 billion in Federal public buildings projects. These include new construction, repair and alteration, acquisition (lease conversion), and leases.

There is a new feature in the FY 1995 budget. These are the lease conversion or acquisition prospectuses. By requesting additional appropriations for capital expenditures such as new construction or space acquisition, GSA is moving in the direction of developing a capital budget. Operating expenses will continue to be funded through the Federal Buildings Fund.

By approving a lease conversion prospectus, GSA will have the authority to go to the market and determine the most cost-effective method of housing Federal agencies. This could be a lease renewal or actually acquiring (purchasing) general purpose office space. This approach is a good idea—the Federal government has been leasing too much space in areas of the country where purchasing is the best option.

There are still some major concerns with this new program, however. While I congratulate GSA for pursuing capital budgeting, at this time I am not convinced that enough details are available to make it a viable program. By giving GSA the flexibility to let the market determine the most cost-effective means of housing Federal agencies, there can be substantial savings to the taxpayers. However, since this is a new endeavor, it is imperative that we work out the details of the program now, rather than see it fail because it was poorly planned and implemented.

TIME-OUT AND REVIEW

I applaud Roger Johnson and the staff at GSA for the completion of the time-out and review report in 5 months time. I realize that this was a tremendous undertaking—but it was desperately needed. By re-examining all public buildings projects to determine their cost-effectiveness, GSA has been able to save the taxpayers hundreds of millions of dollars. While I still have some questions regarding the methods GSA used, I welcome their attempts to put some checks and balances into the process of housing the Federal government. I want to assure my colleagues that I will continue to monitor GSA's progress to ensure that the savings identified are actually realized.

I want to also thank Senator Metzenbaum for all of his hard work and continued efforts on behalf of the American taxpayers. His bill to reform GSA's real estate practices is a step in the right direction. The bill recognizes the need for some extensive planning by GSA. The submission of a biennial plan to Congress would force GSA to list their real estate priorities. I understand that the Administration has some concerns with the bill. It is my hope that GSA will work with Senator Metzenbaum and members of the task force to craft a bill that will move GSA into a cost saving approach to meeting the Federal government's housing needs.

The Environment and Public Works Committee has a responsibility to the Senate to authorize the FY 1995 public buildings program prior to the action of the appropriations committee. This committee will meet this obligation and I look forward to working with GSA and my colleagues towards this end.

Senator GRAHAM. Our next witness is Elliott Levitas.

Mr. Levitas, I am holding the Chair until Senator Metzenbaum can return. Upon his return, I will have to leave, but if you could commence your statement, I would be very interested in hearing as much of it as I can.

STATEMENT OF ELLIOTT H. LEVITAS, PUBLIC PROPERTIES POLICY ASSOCIATION, A FORMER UNITED STATES REPRESENTATIVE FROM THE STATE OF GEORGIA, AND FORMER CHAIRMAN, HOUSE SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

Mr. LEVITAS. Thank you, Mr. Chairman. I do have a prepared statement which I would like to submit for the record and simply summarize some of the points I think are more salient.

Senator GRAHAM. Without objection, your prepared statement will appear in the record.

Mr. LEVITAS. I am very privileged to be here before your subcommittee today on behalf of the Public Properties Policy Association to offer some observations about the space procurement program of the Federal Government, particularly GSA, and Senator Metzenbaum's legislation, S. 1760.

I would like to take the opportunity to commend Senator Metzenbaum and this committee for once again becoming very much involved in this program. As you know, Mr. Chairman, for a number of years the Senate had pretty much left the role of space procurement in GSA leases to the House of Representatives. I can tell you, as a former Member of that body, we appreciate that, but I am not sure that it served the public's or the Government's interest. Just the recent events of the Senate becoming reinvolved has demonstrated to me that it has been a very beneficial development. I commend this committee and you and your colleagues for doing so.

Senator GRAHAM. Well, I want to say that I am well aware of the distinguished work you did in the House of Representatives, particularly as Chair of the Public Buildings Subcommittee. That makes us especially receptive to your insights and recommendations.

Mr. LEVITAS. Thank you very much, Mr. Chairman.

The Public Properties Policy Association, which I am here representing today, was actually founded in 1990 with an expressed goal of improving Government space acquisition programs by providing for the first time an organized industry voice to participate in the Government policy-making process and implementation. In fact, the people who came together to organize this group were encouraged to do so both by Members of the Congress and representatives of the General Services Administration, who were looking to have an industry group that they could come to and talk to about mutual problems and see if mutually acceptable solutions could be reached.

In this area, as you commented in your own remarks a few moments ago, it is very much an area where we can learn from the private sector. The government must rely to a great extent on the private sector. To the extent that the Government can bring into play business-like procedures and private sector practices, the government will probably end up with some good results.

So therefore, the existence of this Association was deemed to be a forum and an opportunity for the industry and the Government to come together and reach some of these solutions and share information.

There has been considerable improvement, from my perspective, of the quality of staff and the work done by GSA in the last 10 years. But this does not mean that there haven't been major missteps on some occasions and that particular procurements have gone awry, or that additional reforms are needed.

I want to applaud Administrator Johnson and Deputy Administrator Stasch for the time-out and review program to assess existing GSA inventory and active procurement plans before making future decisions. However, to be successful, there must be genuine reassessments and not just number juggling. Whether the time-out and review is ultimately successful will not be fully known until and unless decisions made in that review are fully implemented and prove as beneficial as projected.

I might suggest to the committee that in reviewing the projected savings outlined by the General Services Administration that you might want to look behind the macro numbers you are given into specific savings and how they were ascertained to be sure that the savings being reported are actual savings and not—as Senator Simpson alluded to earlier—simply departures from baselines that may have been arbitrarily established.

It is essential that the procurement process for Government space be predictable and consistent. Frequent starts and stops in procurement and changes in direction during the process are not only harmful to the private sector companies that participate, they are harmful to the Government as well by damaging its credibility, bringing about serious delays and increasing costs to the taxpayers. GSA's planning process and its implementation must be coordinated in such a way that except in the most unusual circumstances the nature and process of a procurement can be developed at the outset and followed through without significant modifications, except in the most unusual and unanticipated circumstances.

Private sector competitors are able to adjust their way of doing business to almost any procedure and procurement process the Government desires. What they have difficulty in doing, however is to respond to frequent significant changes and starts and stops in major procurements.

Let me skip over into a couple of other items in my statement because I have already alluded to them and you have made reference as well.

Concerning non-businesslike practices, one of the major criticisms of GSA procurement is that it is often totally lacking in good business practice and even logic and common sense. I am encouraged by what I have heard Administrator Johnson and Deputy Administrator Stasch say so far on the subject of making GSA procurement more businesslike. While there are many circumstances in which public procurement must necessarily differ from private sector procurement of space, it does not follow that sound business practices and common sense should not have a major role in decisionmaking.

One of the major institutional problems, Senator, that I have noticed is the fact that incentives are not created for successful and creative decisionmaking and for GSA employees to be rewarded for doing things that in the private sector they would be rewarded for. The consequence is that it is a lot safer for a GSA contracting offi-

cer to say "no" than to say "yes". By saying no, he is not going to get in trouble. By saying yes, he may be. Yet there is no corresponding reward for the GSA employee who says, "This looks like a good idea. I would like to see if we can benefit from it." Instead, there is a disincentive for performing in a creative fashion.

I think it is very important because I have seen a number of situations where opportunities have been brought to the attention of GSA only to be rejected out of hand because there are no incentives created, as there would be in the private sector, for employees who make a decision that pays off to the benefit of the agency and for the taxpayer.

Another problem is the delays you have been referring to in your comments, Mr. Chairman. Normal procurement process or modifications in pending process frequently require a considerable period of time to accomplish. Various reviews within GSA and OMB, followed by a lengthy period or delays for Congressional approval in some instances, consume a lot of time. There are occasions in which a clear and present benefit to the Government may exist, but there is only a short window of opportunity which will remain open.

In these circumstances, perhaps a system could be adopted which would permit an expedited decision to be made, which would in effect bypass or shorten the normal procedures in order to obtain the benefit to the Government. An approval process could include a sign-off by the Commissioner of Public Buildings and then approval by the appropriate leadership of the House and Senate committees.

Another continuing problem that is plaguing GSA and the private sector is the failure of GSA and its tenant agencies to surrender possession of leased space at the conclusion of the lease term. This is still a serious problem and has a serious impact on lessors. It is virtually impossible, Mr. Chairman, to evict the Federal Government. Once they are in a building, they can remain there forever.

Imagine a private sector tenant of a building who has a 10-year lease. Toward the end of that lease, if it is not going to be renewed, the private sector lessor needs to start looking for a new tenant to bring in and to assure them that they will receive occupancy on or about the expiration date. That is not true with the Federal Government. One of the consequences of that results in condemnation procedures, additional cost to the Federal Government, as well as great disadvantage to the private sector.

The entire process is not only unfair to landlords, but is frequently very costly to the Government in having to proceed with these condemnations and the court decisions in which large awards are given to landlords for the holdover. Better planning and coordination by GSA is needed to relieve this problem and will be absolutely essential as more than 5 million square feet of leases will expire in the national capital region alone in the next 5 years. If this problem is not addressed, these 5 million square feet of expiring leases are going to create considerable chaos in the market and cost to the Government.

Another problem is that GSA speaks in a language that is all its own. The method of calculating the amount of space used by GSA is different from that used generally throughout the private sector.

As a result, comparisons between market prices and Government procurements are difficult to make or understand. In addition, GSA's method of evaluating financial benefits and costs are unnecessarily arcane. Senator Metzenbaum has addressed that.

Senator GRAHAM. I am sorry, but with the possibility that I might have to leave early, could you elaborate—maybe with an example—of what are some of the differences between GSA and standard business practices in terms of sizing buildings or other things that lead to difficulty in comparability.

Mr. LEVITAS. I might say that as a result of the urging of this subcommittee, changes are now afoot to bring local standards into play for GSA. But in the present system, there is a separate way that the building owners and managers throughout the country calculate their space in terms of net usable square feet or occupiable square feet or gross square feet. GSA has its own system for calculating those measurements, which are different from the way the private sector is calculating them. So normally what you would see today is proposals made in terms of the Government method and the private sector method. Then you as a policy-maker or decisionmaker are confronted with this type of information, you are at a loss to know which is the actual way in which the calculation of rent is going to be determined.

I am pleased to say that it is my understanding that beginning in June of this year GSA is going to move to a local standard for measurement. Starting with the fiscal year 1996 year, they will use that method for planning as well. So the committee has already had some impact.

Another example, however, is that when you ask GSA how much a lease is going to be—what is the cost to the Government—you are frequently given comparisons not based on the actual dollars spent but present-value dollars, and converting the present-value dollars of a Government lease 10 years or 20 years into the gross amount frequently results in distortions.

I remember recently Senator Metzenbaum had a problem with a lease at Columbia Plaza here in Washington, D.C. because GSA would come up and explain to him the calculations in their method of determining what the cost was, and the Senator was looking for simply a comparison of how much it costs. He was not able to get that type of information.

I think that just some common sense use of the English language would result in minimizing that problem.

One of the provisions in Senator Metzenbaum's bill, S. 1760, I think is a great step forward, and that is the creation of an Office of Ombudsman, who will be in a position of receiving complaints and grievances from the private sector and acting upon them. One of the reasons this is so important, Mr. Chairman, is that you must remember that the business community, which is dealing with GSA and its employees, and is relying on them to treat them fairly and evenhandedly, find it awkward to complain about the practices that may be abusive or may sometimes result in delays because they are talking to the person who the next time around is going to have to make a decision on whether they succeed or don't succeed.

Having an ombudsman there will be an opportunity to have these complaints looked into. If they are not meritorious, they can

be dropped. If they are, action can be taken without jeopardizing the relationship between those that have to deal with the agency and the officials who hold their fate in their hands. Just as the 1970s and the 1980s were the decades and years in which the Inspector General system came into play in our Government, I suspect that a system of ombudsmen may be right around the corner during the decade of the 1990s.

But it clearly is a necessary situation where there are problems that have to be addressed and will be unaddressed if the person who has become aware of this situation feels that the only person who can listen to him is the individual who has created the problem and is going to be deciding about his financial well-being in another 6 or 8 months. The ombudsmen idea is a very positive one and I commend Senator Metzenbaum for including it in his bill.

Senator Simpson asked for some specifics of how the whole process can be improved. One of them can be done very easily and should be done. It has been tried before, only to be frustrated by OMB. This is the so-called "scoring rules".

The scoring rules are methods by which the Office of Management and Budget calculates the budgetary impact of a governmental obligation. The result of the OMB system has been to skew the whole system in favor of leasing rather than in favor of acquisition by purchase or by the use of other creative systems—mortgages, for example. Everybody in America buys a home or builds a building with a mortgage.

It is the rare situation in the Federal Government. It takes special legislation for a particular project, otherwise it can't be done. The scoring rules are right at the heart of this.

If you have a long-term lease, with the Government having the right to acquire that lease for a dollar at the end of the lease term, almost certainly that is going to be considered a capital lease and will be scored as if it were a 100 percent purchase in the first year. That has tremendous budgetary impact on the total budget. As a result, lessors who are prepared to give that type of favorable deal to the Federal Government are confronted with the fact that the Government can't accept it. So instead they will allow the Government to buy the property at fair market value at the end of the lease, which is acceptable, but it costs the Government more money.

That is something that could be dealt with—it could be dealt with now. In fact, I understand that legislation is now pending and moving in the House Public Works Committee to change the OMB scoring rules to provide this flexibility so that the most appropriate method of financing can be achieved in any given circumstance as a result of decisions made by GSA and the Congressional committees.

One of the other reforms that I think could be made now is to bring under the Competition in Contract Act, the purchase of real estate by the Federal Government. If you go out to lease a building, or if there is a competition for construction of a building, or other Federal procurement of that type, there are procedures in the Competition in Contracting Act that Congress passed in 1984, I believe.

If you go out and buy land or real estate, the Act does not apply. If you just go out and buy land, that type of competition is not re-

quired by current law. There doesn't seem to be a good rational basis for that.

There was recently an effort to acquire space for a large Federal agency here in Washington, DC. When it got down to the final analysis, GSA simply said, "We are not going to compete for the lowest bid we are going to buy this piece of land because we are not covered by the Competition in Contracting Act." Now there may be certain unique circumstances where real estate is by nature unique, but in most instances, if you are just looking for real estate, there is ample reason to believe that again the marketplace will provide the great monitor. If you have competition in contracting for such types of acquisition, you will get better prices and certainly you will have a level playing field, just as you do in other types of procurements.

One of the perceptions I have, Mr. Chairman, both from my experience in the Congress as well as now from the other side of the table, is that GSA is pretty much at a crossroads in its own activities and existence right now. More and more, you hear demands from various agencies to have delegated to them the opportunity to do what GSA has been doing for them. Recently, the Securities and Exchange Commission received that authority. I think the Department of Agriculture has recently sought that authority.

Other agencies have sought that authority. In some instances successfully and in other instances unsuccessfully. I know the FCC was trying to get that authority a year or so ago and did not. But the other agencies are now coming to you asking for that authority.

It is my sense, Mr. Chairman, that that would be a grave mistake to decentralize this service in the Federal Government. You wouldn't solve the problem, if there are problems—and there are—you would simply replicate those problems at GSA in each agency to which it has been delegated. The best place to deal with the problems which exist are at GSA. There you have in one agency the expertise and the people who know what they are doing. Do not simply subdivide that responsibility and replicate the problems that you already have.

I know the Clinton Administration in its National Performance Review has recommended more decentralization of Government space to individual tenant agencies. But while there are certain functions like small procurements or certain rehabilitation and repair programs that might be handled in that way, in any major procurement, you will be better served by improving GSA rather than replicating the problems in a dozen GSAs in various agencies around the Government.

GSA can do the job and do it well if it is properly managed, if the tough decisions are made and tenant agencies can be made to abide by them, and if Congress provides the necessary oversight. And that is very essential. One of the reasons GSA is at a crossroads is because it doesn't always do its job, and it needs to.

I believe Senator Metzenbaum asked the Deputy Administrator a question about the assignment of space to agencies who then refuse to accept that assignment. I was not clear that I understood the Deputy Administrator to say that GSA has the authority and will exercise it, but the fact is that GSA does have that authority and

must exercise it. That is what it is in existence for. If it doesn't exercise the authority of making those decisions and implementing those decisions, and enforcing those decisions, then there may not be a need for GSA. I think that is an area in which this committee can play a major role to see that that is done.

Senator GRAHAM. Excuse me, Mr. Congressman.

We started our Democratic Caucus at noon today. I would ask, if possible, if you could summarize in the next 3 or 4 minutes.

Mr. LEVITAS. I am right at the end, Mr. Chairman.

I just think that OMB and the White House must make it clear to GSA that if it conducts a fair and open procurement, and if sound decisions are in the best interest of the Government, then GSA must enforce those decisions and can expect the support of Congress and of the Administration in bringing it about.

The Southeast Federal Center is an example of GSA making the tough decision. The National Science Foundation, which was recently moved to Ballston fought a move tooth and nail. It took GSA ordering them and then the White House to implement that decision before it occurred. Now NSF is there, they are happy, and they are integrated into the community.

The same situation now exists with the Federal Communications Commission. A procurement that started in 1987 has still not been consummated because FCC refuses to accept the result of the procurement process. All it would take is the stroke of a pen by the GSA Administrator to implement a decision that GSA has already made.

Mr. Chairman, I think there is an opportunity for this committee to save the taxpayers literally hundreds of millions of dollars. This can be done by adopting some of the reforms proposed by Senator Metzenbaum and to conduct oversight. And then when you get ready to move into oversight, Mr. Chairman, I would suggest that the committee should take some specific examples of success stories and stories of failures to see what worked and what didn't work, not just get the generic answers that you may get from the agency about taking macro steps, but look at specific situations to see why they failed or see why they succeeded.

I thank you for your attention.

Senator GRAHAM. I want to thank you for excellent testimony, which was rich with ideas for this committee to pursue. I apologize that our timing has run over.

I would ask unanimous consent that the hearing record remain open until 5 p.m. for Members to submit opening statements and questions for the witnesses.

Senator Metzenbaum asked me to relay his sincere apologies. He became detained in another meeting and will not be able to return. He therefore has asked me to adjourn this meeting of the subcommittee. The meeting is adjourned.

[Whereupon, at 12:14 p.m., the committee was adjourned to reconvene at the call of the Chair.]

[Statements submitted for the record and the bill S. 1760 follow:]

PREPARED STATEMENT OF JULIA M. STASCH, DEPUTY ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION

Good morning Mr. Chairman, and members of the subcommittee. Thank you for the opportunity to appear before you today to discuss the General Services Administration's (GSA's) fiscal year 1995 Capital Improvement Prospectus Program.

GSA'S PUBLIC BUILDINGS SERVICE RESPONSIBILITIES

GSA's Public Buildings Service is responsible for providing the workspace for Federal departments, courts and agencies to carry out their work. This is crucial to the government's operations, and we take this responsibility seriously. The Public Buildings Service is committed to providing our clients with quality services at the best value, thereby enhancing their ability to carry out their missions. We provide quality facilities; safe, healthful work environments; and sound management of the Federal government's real property assets.

The Public Buildings Service primarily supplies general purpose space, but our inventory also includes special-use facilities, such as courthouses, border stations, laboratories and data processing centers. More than one million Federal employees from all three branches of the government work in our facilities.

TIME-OUT AND REVIEW

From early September 1993 through mid-March of this year, GSA has been engaged in the review of new construction, modernization, and lease projects, not yet awarded for construction or lease. Our goals were to ensure that these projects are still needed in light of changing client agency requirements, to explore possible new, less costly alternatives for meeting these client needs, and to provide the most cost-effective implementation possible for projects recommended to proceed. The proposed projects in GSA's fiscal year 1995 Capital Improvement and Leasing programs have been subjected to the scrutiny of time-out and review, and, where appropriate, the request for authorization in individual prospectuses has been modified to reflect the results of our review. We anticipate that our time-out and review process will yield \$1.2 billion in immediate and long-term savings.

ALTERATIONS

GSA's prospectus program includes proposed projects for the major modernization of existing buildings, which are reinvestments to renew and replace the buildings' infrastructures and extend their useful life. This is particularly important since 61 percent of the public buildings service's Federally owned buildings are over 30 years old. For fiscal year 1995, GSA has proposed 26 alteration projects, including 12 building-wide major modernization projects, and 16 new design projects. In addition, GSA has requested authority to begin a major initiative to replace chlorofloucarbons (cfc). This program will require \$105 million in fiscal year 1995 and \$732 million for the entire program which will extend over several years. GSA is also requesting \$51 million in authority for fiscal year 1995 to continue implementation of energy retrofit and conservation measures in government-owned buildings. Congress authorized \$37 million for this program in fiscal year 1994.

CONSTRUCTION AND ACQUISITION PROGRAM

The Construction and Acquisition Prospectus Program provides for the site acquisition and design of four border stations, seven U.S. court facilities, and three special purpose facilities; and construction and management and inspection funding for one border station, five U.S. court facilities and one special purpose building. GSA is committed to meeting the needs of the U.S. courts, as well as other client agencies, based on a realistic assessment of project scopes and costs. For the courts, this has led us in most instances to structure proposed projects to meet the 10-year need with adequate planning to accommodate longer term requirements.

In addition to proposed construction projects, GSA has recently submitted to the Congress 14 prospectuses for the acquisition of facilities that will replace more costly leases. GSA intends to utilize the new acquisition prospectuses and current market conditions to determine which of a range of candidates for acquisition will eventually be selected for government ownership. We are prepared to justify the long-range savings for each proposed transaction, and look forward to discussing the specific details of this program with the committee in the very near future.

Some requirements will remain for which an ownership solution is not justifiable. In those instances where client agency requirements are changing, where the need for space is short term, or where ownership would not be cost effective, we will pro-

pose the leasing of space. GSA has just submitted five such prospectuses to the Congress as part of our fiscal year 1995 program.

Mr. Chairman, GSA values the continuing interest of this committee and its task force in our public buildings programs. We appreciate the opportunity to appear before you today to discuss our capital program. I would be pleased to respond to any questions the committee may have.

**PREPARED STATEMENT OF P. GERALD THACKER, ASSISTANT DIRECTOR FOR FACILITIES,
SECURITY, AND ADMINISTRATIVE SERVICES**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: Thank you for the opportunity to appear before you today to discuss the Judiciary's housing needs and actions that have been taken over the past few years to manage our construction program effectively.

This committee and its counterpart committee in the House have acknowledged the space requirements of the Federal Judiciary through the authorization of over 70 major renovation and construction projects since 1991. We appreciate the consideration of these requests and want to assure you that the Judiciary is committed to working with the subcommittee members and their staffs to ensure our requirements are reasonable and cost-effective.

The size of the Judiciary (1,900 judges and over 25,000 staff) has expanded constantly and dramatically, particularly within the last 2 decades. That growth is apt not to abate. Space for such striking growth, and security in it for its personnel, are essential for the Judiciary to carry out its constitutional role.

The problem, as you well know, is that the building program has come in the middle of similar dramatic shifts in funding availability. Budget battles, deficit reduction efforts, balanced budget amendments and a general notion of cutback management pervade the process.

The Judiciary is wholeheartedly committed to cost containment. Its policy-making body, the Judicial Conference of the United States, and its Committee on Security, Space and Facilities, chaired by Judge Robert C. Broomfield, have been sensitive to that need and have been focusing on it for the past several years.

The Judiciary's building program has proceeded pursuant to a well thought-out long range planning process and is being managed prudently, consistent with the Judiciary's governance structure. It has been subjected to some criticism within the last year. I hope my remarks today not only put in context that criticism but also communicate the strengths of the program and the reasons and need for it.

UNITED STATES COURTS DESIGN GUIDE

The approval by the Judicial Conference in March 1991 of standards for all court-occupied spaces published in a United States Courts Design Guide has provided GSA and its architects with the specifications they need to design functional new court space. Prior to the issuance of the Design Guide there was little guidance available to the Judiciary, GSA or the design community. With few standards in place, it was difficult to manage the process. Continuing review of those standards by the Security, Space and Facilities Committee has resulted in many cost-saving changes since the time the Guide was first published in 1991.

The circuit judicial councils (which have responsibilities for administering the business of the courts) have the statutory authority to approve the need for a given court "accommodation" (28 U.S.C. 462 (b-e)). When it approved the Design Guide standards in 1991, the Judicial Conference also vested authority to approve exceptions to the standards in the circuit judicial councils. Consequently, the Judicial Conference's Security, Space and Facilities Committee has fostered awareness on the part of the circuit councils of their critical role in enforcing the Conference-approved standards and in containing construction costs. For example, the Committee Chairman Broomfield has spoken at meetings of Chief Circuit Judges and the entire Judicial Conference (over which the Chief Justice of the United States presides) about the need for fiscal restraint and to enforce the Guide. The judicial councils, indeed, have exercised control over requests for exceptions to Design Guide standards. Considering the size of the facilities program, there have been relatively few requests for exceptions.

The Judiciary is attempting, through its Security, Space and Facilities Committee, the Administrative Office of the United States Courts and the various circuit judicial councils to be economic, prudent and cost-conscious in this effort. In fact, substantial cost savings have occurred. At its September 1993 and March 1994 sessions, the Judicial Conference approved a number of amendments to the Design Guide

that will reduce the costs of courthouse construction to GSA. A listing of those cost containment items is attached to this statement. Changes in acoustical standards alone will save about a half a million dollars in the average-sized new courthouse.

RELATIONSHIP WITH GSA

As you know, the Judiciary has no direct authority to secure facilities for its judges and staff, whether in courthouses, Federal buildings or leased space. That responsibility lies exclusively with the General Services Administration, by law. It is GSA's responsibility to plan for the space needs of its clients, which is essentially most of the Federal government. The current GSA Administrator Roger Johnson and his Deputy Julia Stasch have worked closely with us and have been sensitive to and supportive of our needs. I cannot say that prior administrations were as willing to work with us. Certainly, Mr. Johnson and Ms. Stasch have taken a new approach to real property administration. However, in the past GSA had not addressed long term housing requirements. Out of necessity, the Judiciary has had to fill this planning "void."

LONG RANGE PLANNING PROCESS

In March 1988, the Judicial Conference approved a recommendation that requires each judicial district to develop a plan of its facilities projections in both the short and long term, based on a consistent methodology. The plans provide a context in which the Congress and GSA can make informed real property decisions. Eighty-five districts have completed their plans. The few districts that have not completed their plans are not expected to need additional facilities in the long-term.

The innovative planning process has been refined continually since it first began in January 1989. The initial phases of the planning project were particularly challenging, since the districts with the most urgent housing problems were addressed first. The statistical methodology and planning assumptions also have evolved over time. The Judiciary has implemented an updating procedure to bring all long range plans up-to-date in terms of data gathering techniques, caseload forecasts, planning procedures, and supporting documentation. To date, 30 district-wide plans have been updated or are in the process of being updated. Projections for individual projects within districts are routinely performed to ensure that all space estimates conform with current planning assumptions. Over 100 project-specific updates have been performed to date.

As far as we can tell, no branch or agency of substantial size within the Federal government had undertaken to plan for its long term space needs until the Judiciary's effort commenced in 1988. In that sense we are a first.

GENERAL ACCOUNTING OFFICE REPORT

Unfortunately, there has been criticism of the Judiciary's planning process. Much of the criticism directed specifically at the courthouse construction program has stemmed from a report of the GAO's review of the Judiciary's long-range facility planning, initiated by a former GSA Administrator and requested by the House Public Works Committee.

GAO asserted that the initial caseload projections used in the planning process were statistically flawed, and that allowing court managers and judges to participate in developing the long range plans permitted too much subjectivity. Consequently, the GAO study team concluded that the results of the plans could not be used by the Congress to make decisions on authorizing and funding new construction projects. The GAO report also asserted that the Judiciary has more space than it needs for current staff and more staff than it needs for current workload.

Although some minor statistical fine-tuning is warranted and already has been accomplished, the GAO report failed to consider the age of the current courthouses (and attendant space inefficiencies) and the existence of multiple facilities in each district (with attendant duplication between facilities of such spaces as jury assembly rooms, public areas of clerks offices, grand jury rooms, etc.). The study did not address GSA policy decisions to separate bankruptcy courts and district courts and the costs to the Judiciary of having split court operations, including court security officers at multiple locations. Also, the study applied fiscal year 1991 ratios of staffing on board to current caseload rather than using work measurement formulas (which would have revealed that the Judiciary is some 15 percent understaffed at present).

The study also failed to recognize that our long range planning process is but one in a series of steps in the project development process. It is important to recognize that the Judiciary is not making proposals on courthouse construction in a

"vacuum." The long range plans provide a context for the Judiciary, GSA, OMB, and the Congress to make a decision about a specific project. I have attached to this statement a chart that displays the decision points in the entire project development process.

Upon receipt of the GAO report, the Judiciary asked the National Center for State Courts to critique the Judiciary's planning program, especially in comparison to what is done by state courts. The National Center's report concluded:

The methods used by the AOUYC in its long-range planning program are at least as rigorous as generally accepted practices used by State and local governmental jurisdictions. With some minor exceptions . . . the AOUYC's process should be considered a model to be followed by other jurisdictions that might wish to take a comprehensive look at their court facilities.

We hope that you will agree that the Judiciary's planning process, with some minor modifications, is a useful planning tool.

GAO UPDATE

Last month, the House Public Works Committee asked GAO to evaluate our progress with implementation of the recommendations it made in its report. Based on two briefings we have had with GAO staff, it is fair to say that, in spite of the reservations we have about the report itself and its conclusions, significant progress has been made. The Judiciary has already addressed, or is in the process of addressing, all of the major recommendations in the GAO report.

We have just been provided with a copy of GAO's most recent letter report to the House on our progress. Based on that analysis, it seems that sufficient adjustments have been made to satisfy GAO's concerns. At a hearing on April 21, 1994, members of the House Public Works and Transportation Subcommittee on Public Buildings and Grounds expressed their support for the progress we have made with refining the planning process.

The House Subcommittee members also seemed pleased with the cooperative working relationship that has developed between the Judiciary, the General Services Administration and the General Accounting Office. The Administrative Office staff wants to work with GAO staff to refine the process further.

INDEPENDENT COURTS BUILDING PROGRAM PANEL

In September 1993, the Judiciary and GSA jointly convened a private-sector panel of architects, engineers, and construction industry professionals familiar with State and Federal courthouse construction to suggest ways of reducing construction costs. The program panel was created, as stated on page 7 of its December 1993 report, to "provide a realistic and candid assessment of the (courthouse construction) program and to identify any possible opportunities for cost savings." The panel studied the courthouse construction process and made a series of recommendations, most of which were directed at ways GSA could change its procurement process and better manage the process in general.

A primary panel recommendation was that a joint GSA/Courts Courthouse Management Group (CMG) be established to serve as the central management organization for the courthouse construction program. The group would serve as the nationwide "center of expertise" on court construction and would act as the single representative of the Government on each courthouse project.

With the Government speaking with "one voice" vested in the CMG, it will no longer be necessary to "reinvent the wheel" each time a new courthouse project begins. Consistent interpretation of GSA and Judiciary construction policies and guidelines will be a natural result of this process. It is anticipated that the courthouse construction program will continue to improve over time because the CMG members will learn "what works and what doesn't work" based on their experiences. The Judiciary strongly supports this panel recommendation and has been meeting frequently with GSA to guarantee its success.

The panel also reviewed in detail the United States Courts Design Guide. It made several observations and some recommendations that were adopted by the Judicial Conference last month. Those cost savings measures had to do with elimination of secure parking for service vehicles, reductions in doors requiring locks, and inclusion in the Guide of language that will caution GSA's architects not to overemphasize the exterior design of a courthouse. It is important to note that the independent panel observed in its report that: "Perceptions that Federal courthouses are gold-plated or extravagant which lead to projects costing twice as much as they should is simply incorrect."

"TIME OUT AND REVIEW"

Mr. Chairman, we have heard that GSA has completed its final report on the "Time Out and Review." Since that process was an Executive Branch initiative and the methodology employed was developed by the Administration, I must defer to GSA to describe how the courts will be affected.

As you know, the Judiciary does not calculate the building project budgets submitted for your review—that responsibility is vested in GSA and the Office of Management and Budget. The budget reductions GSA hopes to realize, as we understand it, are based mainly on assumptions of "value-engineering" i.e., objectively evaluating design decisions with an overall look toward cost effectiveness. We support GSA in these efforts but have not been provided with the detail of how the cost savings will be achieved. We will work closely with GSA to ensure tax dollars are saved without impeding the functionality of court space and understand that GSA is committed to working with us.

As noted throughout the Independent Courts Building Panel Report, an aggressive, well-organized construction project management program should be put in place by GSA. The Panel's report, on page 18, states: "Value Engineering, as currently practiced on courthouse projects, has produced mixed results. Future VE team members should be selected partly on the basis of their commitment to common project goals." We believe that a commitment through enhanced management as envisioned by the Panel is virtually the only way savings can be achieved.

THE PUBLIC BUILDINGS REFORM ACT OF 1993

Mr. Chairman, you asked that we comment on S. 1760, the Public Buildings Reform Act of 1993, which you introduced with Senators Boxer and Simpson. Our comments on the bill will be brief and relate to Section 7 (a)(2)(B)(ii) which calls for two account managers to assist the Administrator in preparing uniform housing standards for establishments in the Judicial branch of the Federal Government. We also will comment on Section 7(b) which requires reductions in space and housing costs.

With reference to development of uniform standards for housing needs, I am pleased to report that we have been working with GSA for over 5 years to develop and refine our space standards. The United States Courts Design Guide was developed under the guidance of the National Institute of Building Sciences. Architectural experts were employed by the Institute who specialize in unique design requirements of courthouses.

Except in special spaces, such as courtrooms and chambers, the Guide is based on GSA's building standards; those standards are referenced throughout the document. The Guide was reviewed with GSA on several occasions prior to its first publication in 1991. There has been a revised version since then which incorporated several additional GSA comments. A 1994 version of the Guide will integrate the cost containment measures I referenced previously and additional comments submitted by GSA.

If the intent of this section of the bill is to give the GSA Administrator statutory authority to issue design standards, we would hope an exception could be made for those establishments, like the Judiciary, which have unique space requirements such as laboratories, hospitals, or museums. It would seem to us that the tenants with specific space requirements are in the best position to articulate their space needs. We would be happy to work with the committee's staff to obtain further clarification of this section of the bill.

As to the section of the bill requiring a 5 percent reduction in space and space-related costs over 3 years, I cannot estimate at this time how the Judiciary would achieve the savings. As a member of the Judiciary Committee, I hope you can understand that we are one of the few Federal organizations that are experiencing growth in our staffing. The number of judges also continues to increase. Again, we would like to discuss this section of the bill in more detail with you and the committee's staff.

Mr. Chairman, on behalf of Ralph Mecham, the Director of the Administrative Office of the United States Courts, and Judge Robert Broomfield, thank you for the opportunity to appear before you today. Should you have any questions, I would be happy to answer them at this time.

THE JUDICIARY COST CONTAINMENT MEASURES COURTHOUSE CONSTRUCTION PROGRAM

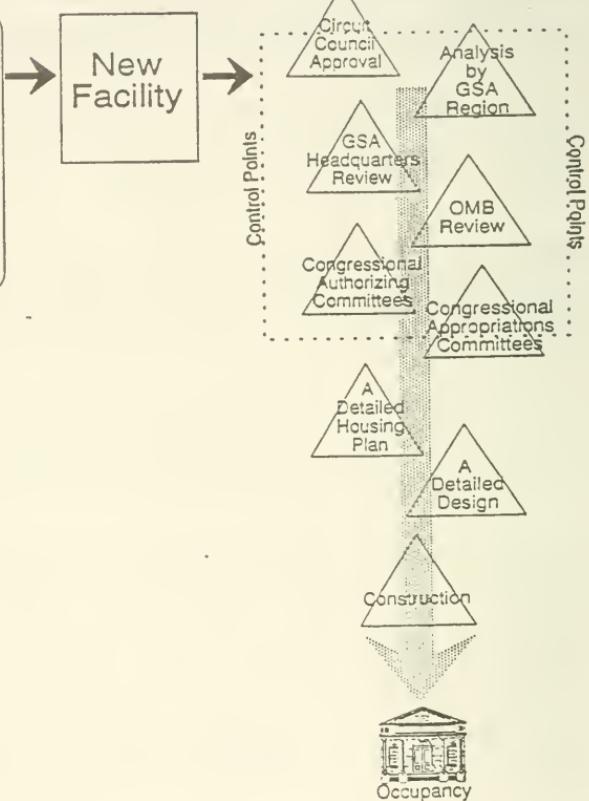
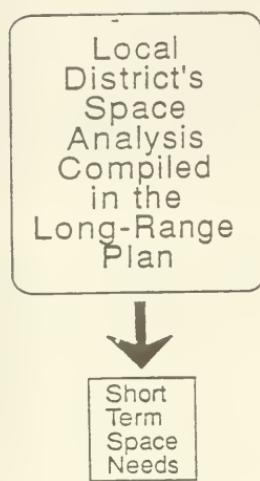
The Judiciary's space standards are under constant review by the Committee on Security, Space and Facilities of the Judicial Conference of the United States (the Judicial Conference is the Judiciary's policymaking body). The following are the sig-

nificant cost containment changes that have been adopted by the Judicial Conference:

1. Reduction in the acoustical ratings of walls in court space, projected to save \$500,000 in the average courthouse.
2. Reduction in the ceiling height requirements for courtrooms in leased spaces.
3. Deletion of showers in judge's restrooms.
4. Elimination of the space standard for meeting/training rooms.
5. Addition of language emphasizing the need to share conference rooms, staff lounges, and staff toilets by court offices.
6. Elimination of the requirements for a separate emergency exit stairwell for judges and prisoners.
7. Elimination of smokers' lounges in jury assembly areas.
8. Reduction of lighting level standards.
9. Reduction in the number of doors requiring locks.

Steps In The Whole Process

All Court Offices
U.S. Trustees
U.S. Marshals Service
Local GSA Staff
U.S. Attorneys



PREPARED STATEMENT OF ELLIOTT H. LEVITAS, GENERAL COUNSEL, PUBLIC PROPERTIES POLICY ASSOCIATION

Senator Metzenbaum, members of the subcommittee, I am delighted to be with you today on behalf of the Public Properties Policy Association to offer several observations regarding the procurement of space by the Federal government and Senator Metzenbaum's real estate procurement reform bill S. 1760. I want to commend Senator Metzenbaum for his commitment in developing this legislation and for his tireless efforts to improve the quality of Federal space acquisition decisions.

ESTABLISHMENT OF PPPA

The Public Properties Policy Association was founded in 1990 with an expressed goal of improving government space acquisition programs by providing, for the first time, an organized industry voice to participate in the government policy-making process and its implementation. By providing input into Congressional and Executive branch space acquisition decision-making, and by developing a greater dialogue between the members of our Association and GSA; we believe that we assist in improving the process for the acquisition of long-term government space needs. Early encouragement for the creation of our Association was received from Executive branch officials as well as Members of Congress. Members of our organization include prominent developers, building owners, contractors, appraisers, and attorneys, and the membership may be expanded in the future to include architects, engineers, financial institutions and others who provide services in this area.

Our goals include the following: (1) to assist in facilitating efficient development and occupancy of quality long-term office space for the Federal government; (2) to represent the interests of the private sector who are providing facilities and related services to the government; and (3) to provide forums for the discussion of issues and the dissemination of informational resources of importance to the lessors, developers, and Congressional oversight committees and agency officials.

GENERAL OBSERVATIONS

Mr. Chairman, let me first say that for the most part there has been improvement in the quality of staff and the quality of work done by GSA in the last 10 years. This does not mean, however, that there have not been major missteps or that particular procurements have not gone awry or that significant additional reforms do not need to be made. I want to applaud Administrator Johnson and Deputy Administrator Stasch for initiating the "Time Out and Review" to assess existing GSA inventory and active procurement plans before making future decisions. Whether the "Time Out and Review" is ultimately successful will not be fully known, however, until and unless the decisions made in that review are fully implemented and prove as beneficial as projected.

PREDICTABILITY

It is essential that the procurement process for government space be predictable and consistent. Frequent starts and stops in procurement and changes in directions during the procurement process are not only harmful to the private sector companies that participate in the process, they are harmful to the government as well—by damaging its credibility, bringing about serious delays and increasing costs to the taxpayers. It also has the effect of discouraging would-be private sector competitors from getting involved in the procurement process at all.

In the last few years for example, several major procurements in the Washington metropolitan area have gone through such a series of stops and starts and changes in directions which have been very costly to those who have sought to participate in the process and costly to the government as well. Literally millions of dollars in the aggregate are lost by offerors in such circumstances . . . not to mention the lost costs to the government in receiving the submissions. This type of wasted expense makes potential offerors reluctant, or at least wary, in the future. Discouraging offerors reduces competition for GSA projects.

GSA's planning process and its implementation must be coordinated in such a way that, except in the most unusual circumstances, the nature and process of a procurement can be developed at the outset and followed through without significant modification except in the most unusual, unanticipated circumstances. In this regard, it could be helpful to GSA in the early stages of developing a procurement for major projects to discuss the anticipated method of procurement, financing mode, schedule and similar considerations with the potential competitive community in order to get the private sector input and raise questions about what is practi-

cal, achievable, financable, and cost-effective before the decision to go forward with the process is commenced. Most private sector competitors are able to adjust their way of doing business to almost any procedure and procurement the government desires. What they have difficulty doing, and cannot do, is respond to significant changes and starts and stops in major procurements.

Perhaps this need for predictability could be aided by permitting GSA to go further down the line in project development, (planning, engineering, etc.) before having to gain Congressional prospectus approval. A similar process has worked well in the military construction area. Hopefully, the "Time Out and Review" process will lessen the unpredictability of major projects in the future. Another step that would be helpful for GSA in the very active and politically sensitive National Capitol Region would be for GSA to develop and discuss with the appropriate Congressional committees a 5-10 year master plan for all space needs in the Maryland/Virginia/DC area.

SOURCE SELECTION PROCESS

The source selection process should be carefully monitored—both by GSA management, the Inspector General and Congress to ensure that overly objective decision-making, favoritism and bias do not taint the process. It is not unusual in the source selection process for an award to be made to a competitor whose price is not the lowest as a result of other factors taken into consideration. While the procurement of quality buildings should sometimes take into account factors other than the lowest cost to the taxpayers, by opening the door to non-objective criteria, it is possible for arbitrariness, cozy relationship considerations or old grudge score settling to come into play.

In the course of one recent source selection process, the post-award debriefing revealed that one of the unsuccessful competitors was scored down because at least one member of the source selection committee considered that the general contractor on the bidder's team was "not as easy to work with as others." Upon questioning, it turned out that the particular contractor in question was a high quality builder but was known to assert and protect its rights against GSA by filing claims for extra work when other contractors were less aggressive in dealing with GSA's contracting officers' project managers. The builder in question had never been cited for misconduct or debarred, but the attitude of the source selection committee member had the effect of scoring down the competitive position of the development team and placed the contractor in jeopardy of not being able to be included upon a team in the future if the negative attitude of source selection members continued to prevail.

OPENNESS VS. SECRECY

Another concern we have with GSA is the secrecy used in the procurement process. We firmly believe that, except where competitive advantage would be provided to one or more competitors or proprietary information released to the public or the competitive procurement process itself compromised, the guiding rule at GSA should be that the entire procurement process is an open one and competitors' requests for information about the status of the process, the factors being considered by GSA and GSA's perception of deficiencies in an offeror's proposal should be freely available. The result would be that the competitors would be in a position to respond more efficiently and effectively to GSA's and the tenant agency's needs.

While there has been improvement in the general openness of communication between private sector businesses dealing with GSA, there still remains unnecessary and annoying secrecy over matters which do not affect competitive advantage or procurement integrity or proprietary information. The policy should be that except in those instances, no information needs to be held "close to the chest" or kept secret.

Recent illustrations of this type of unnecessary secrecy include such examples as a GSA contracting officer telling a competitor that they were not an eligible competitor because the county had told GSA in response to an inquiry that the property was not zoned for the requirements GSA was seeking. When the competitor asked GSA what was the source of that information in the county, since the competitor did not believe it was correct, the competitor was informed by GSA officials that they were not permitted to identify the source of the erroneous information. Another example was a situation in which GSA informed a building owner that one of the reasons they could not consummate a transaction was because the building owner's bank had indicated that there were some financial problems or difficulties. The building owner, who was not aware of any such banking problem, inquired as to

the source of that information and was told that this could not be revealed. In that instance, the transaction actually fell through because no opportunity was provided to correct the misinformation.

A similar problem exists in keeping offerors from having any direct contact with tenant agency decision-makers. Even if such contacts were handled through GSA, the availability of this interchange would enable an offeror to provide for the precise agency needs and also enable the agency to understand what is being procured for it.

NON BUSINESS-LIKE PRACTICES

One of the major criticisms of GSA procurement is that it is often totally lacking in good business practices, and even logic and common sense. I am encouraged by what I have heard Administrator Johnson and Deputy Administrator Stasch say so far on the subject of making GSA decision making more business-like. While there are many circumstances in which public procurement must necessarily differ from private sector procurement of space, it does not follow that sound business practice and common sense should not have a major role in GSA decision-making. Creative solutions in both financing arrangements and lease terms can be mutually beneficial to a building owner or developer and GSA in getting the best deal for the tax-payer.

EXPEDITED PROCEDURES

The normal procurement process or modifications in a pending process frequently require a considerable period of time to accomplish. The various reviews within GSA and OMB, followed by Congressional involvement in some instances, consume a lot of time. There are occasions in which a clear and present benefit to the government may exist, but there is only a short window of time during which the opportunity will remain available. In these circumstances perhaps a system could be adopted which would permit an expedited decision to be made which would, in effect, bypass or shorten the normal procedures in order to obtain the benefit for the government. An approval process could include a sign-off by the Commissioner of Public Buildings, the Administrator and the Chairmen and Ranking Members of appropriate Congressional committees.

HOLDOVER PROBLEMS

The failure of GSA and its tenant agencies to surrender possession of leased space at the conclusion of a lease term is still a problem and has serious impact on the lessors. It is virtually impossible to eject the government.

A lessor may contemplate that GSA will surrender possession of the space and therefore will begin to negotiate with other potential tenants to lease the vacant space at the end of the GSA term and to begin to arrange for modifications, refurbishing and other actions necessary to provide for the new tenancy. On occasions, GSA will notify the landlord at a point near the end of the GSA lease that they are not going to be able to move out of the premises, and, as a result, the lessor may suffer great damage by losing the successor tenant who would have otherwise occupied the premises. In these circumstances, GSA will attempt to negotiate a very short term extension of the existing lease, but that does not address the problem of the lost tenancy and the value to a landlord of a few months' or a year's extension is frequently not reflected in the regular prevailing market values of rents being paid. Furthermore, on occasions, the government is required to condemn leased space in order to arrange for a holdover. Damages in these actions do not generally include the consequential damage of a lost tenant.

This entire process is not only unfair to the landlords but is frequently very costly to the government in having to proceed with condemnations and court decisions which award compensation to the landlords for the holdover problem. Better planning and coordination by GSA is needed to relieve this problem and will be absolutely necessary as more than 3 million square foot of leases expire in the National-Capitol Region in the next 5 years. A more flexible and accommodating position regarding lease extensions would do much to relieve the impact of the holdover as it relates to the landlord.

SIMPLIFY THE ACCOUNTING AND EVALUATION PROCESS

GSA speaks in a language all its own. The method of calculating the amount of space used by GSA is different from that used generally throughout the private sector. As a result, comparisons between market prices and government procurements are difficult to make or understand. In addition, the GSA methods of evalua-

ing financial benefits and costs are necessarily arcane. This mystery frequently lets GSA use its evaluations in a confusing manner in order to justify the result GSA seeks to prove. One of the provisions of S. 1760 most welcome by the private sector would require the use of local measurements in calculating GSA space. I also understand that GSA, under Administrator Johnson and Deputy Administrator Stasch is making plans to go to local area measurement for example, are going to local standards for calculating square footage. This is an encouraging development and I commend you and GSA for making progress in this regard.

OMBUDSMAN

Senator Metzenbaum, I applaud your efforts through S. 1760 to create an ombudsman within GSA to hear complaints and to evaluate alleged grievances regarding Federal space acquisition. Frequently, a business dealing with GSA finds that it is having difficulty in getting information from the contracting officers or the others involved in a procurement process or find that they are getting shunted from one place to the other and not receiving answers. Competitors in these circumstances are sometimes reluctant to press the contracting officers too hard, because they are now dealing with someone who has discretion about making decisions and are concerned about antagonizing them. Also, there is the problem that the person with whom they are dealing is the person who is causing the difficulty—either by not providing information or by some other action that is causing difficulty. Accordingly, the availability of an easily accessible, non-confrontational ombudsman process has the effect of resolving these problems by providing an explanation through a third party that the situation is not as perceived by the organization dealing with GSA. The ombudsman process might also provide a channel within GSA for resolving problems in a direct and non-bureaucratic or litigious context.

RIGID "SCORING" RULES LIMIT FLEXIBILITY

We support legislation moving in the House Public Works Committee to change the OMB scoring rules regarding real estate. OMB has been an obstacle in providing GSA with the flexibility of procuring space by refusing to let GSA use the means best suited to the specific needs. Although they have used other methods in the past, at the present time, OMB exercises this control through a rigid "scoring" methodology which requires up front, full cost budgeting for any lease or lease purchase of space other than a routine operating lease. Mortgage financing is prohibited. This methodology discourages the use of procurement approaches such as lease purchases or time financing and relegates most acquisitions to routine operating leases. It is well established that government ownership of space, and especially large space, is most cost-effective. In the private sector, owners buy space by use of a purchase with a mortgage to pay off over a period of years. Because of OMB scoring, the government is effectively precluded from doing this or engaging in mortgage financing, lease purchasing or other creative financing. As a result, the Federal leasing bill continues to grow upwards towards \$2 billion annually. Opportunities for purchasing existing buildings at bargain rates or constructing new ones is severely limited by OMB's scoring rules.

Also, OMB scoring and tax considerations prevent owners from leasing GSA space for a term of years with an option to purchase for "one dollar" at the end of the term. Instances where the government could pick up a building free have to be passed up.

A legislative remedy is needed to give GSA more flexibility, with Congressional approval, to acquire government ownership of space when that is economically the best way to proceed.

EFFECTIVE REDRESS FOR BOTCHED PROCUREMENTS

Federal law provides procedures to contest or protest lease awards which are made in violation of Federal statutes or regulations. However, as a practical matter, there is no real remedy even where a losing offeror has proved that the lease award was improperly made by GSA. Since GSA leases do not have "termination for convenience" clause, once a lease is signed (i.e., "awarded" in GSA parlance), the lease cannot be set aside, even by a successful administrative protest or court decision. The award of the lease is the first time the public learns of the leasing action and the only effective challenge must be prior to actual award. This situation reduces the incentives for GSA to do the procurement job right the first time and unfairly treats disappointed offerors who should have been successful.

An easy legislative remedy to the problem would be to announce the planned award of a lease ten (10) days before the lease is signed to give an opportunity for a

pre-award protest to be filed or, alternatively, permit leases to be set aside after award if the procurement was found to be in violation, provided the protest was made within ten (10) days of the lease signing.

Also, where an administrative protest or judicial proceeding finds that GSA should have awarded a lease to an offeror, the law should be clear that the administrative or judicial tribunal can order, or at least recommend, the award to the offended offeror. At a minimum, the award should be set aside and the procurement should be done again.

EMPLOY COMPETITION WHEN ACQUIRING LAND FOR GOVERNMENT BUILDINGS

GSA's method of purchasing land for construction projects is anomalous in that, unlike GSA acquisition of leaseholds and new construction, it is exempt from the competitive bidding process. There is no valid reason for this exemption. The interests of the government would be best served by maximizing competition for such site acquisition by requiring so in the law. Reform would require only a small change in GSA's authorizing statute.

STAFFING DEFICIENCIES

There are many bright, creative and hard-working GSA employees in the Public Building Service and in the Planning and Real Estate Divisions of the regional GSA offices. Often, however, their efforts seem to have been hampered by constant organizational changes and lack of sufficient senior level involvement. Too much authority and responsibility are given to low level (GS-7) officials. These inexperienced persons are given great authority in multi-million dollar procurements. In the private sector, their counterparts would have 8 or 10 years of experience before having such authority.

To compensate for this deficiency, GSA piles layers of review and clearance on their decisions to try to avoid major blunders. The result is an inefficient and costly process and a lower quality result. Too often the qualified and experienced high ranking officials are taken out of the line and placed in support staffing or review jobs. If better and more experienced, higher ranking GSA officials were doing the negotiating and procurement, there would be fewer problems.

CONGRESSIONAL PROCEDURES

The major new proposal contained in GSA's FY 1995 program is to establish an acquisition prospectus and allocate \$999 million to acquire existing buildings to satisfy GSA space needs. While I believe the concept deserves careful attention from Congress, there are dangers with this program if the procedures for Congressional authorization are not clearly defined from the outset. As the authorizing committee you need to ensure that the approval process includes ample opportunity for Congressional involvement and oversight and that any allocation of funds does not end up as a target for appropriators earmarks.

As to the existing prospectus process, it would be less costly and more realistic if Congress (a) lowered the prospectus threshold, (b) deferred prospectus consideration until the planning and design (and possibly site options) have been accomplished, and (c) engage in more, and more consistent and continuing, oversight of procurement, especially prospectus approval projects. It would also be useful to make clear, as provided in S. 1760, that the prospectus limitation is a requirement of law and that an award in violation of the approved prospectus should be capable of being set aside.

Presently, because prospectuses are required so early in the procurement process, the financial numbers are often almost meaningless. Just look at the rent or price range spreads that are provided. Further, the time from prospectus development/approval to project commencement/completion is quite long, and costs and circumstances change.

Even if a few projects were not approved, there would be savings in time and money to let GSA further down the project procurement path before seeking prospectus approval.

KEEP GSA IN CHARGE

Currently, GSA has the legal and regulatory responsibility to acquire space for Federal occupancy and to assign tenant agencies to such space. The Clinton Administration—National Performance Review has recommended more decentralization of government space acquisition decisions to the individual tenant agencies. We do not support this proposal. GSA already has the expertise and the procedures in place to serve as the government's real estate acquisition agency. Delegating procurement

authority to other agencies puts the decisions in the hands of less experienced employees and could set up competing interests among different government agencies.

GSA can do the job and do it well if it is managed properly, if the tough decisions are made and tenant agencies made to abide by them, and if Congress provides proper oversight. Congress, OMB and the White House must make it clear to GSA that if it conducts fair and open procurements, and if sound decisions in the best interest of the government are made by GSA as a result of the competitive process, then GSA will be supported even when its decision may be unpopular in some quarters of the government. I applaud GSA, for example, for its efforts to develop the SE Federal Center even though it has faced many naysayers on this project. I strongly commend GSA for staying the course on the relocation of the National Science Foundation to Ballston Commons in Virginia. Just last week, I saw a very favorable article in the Washington Post about a science fair exhibiting futuristic communications equipment that will be utilized along the information highway, being held this week at Ballston and cosponsored by NSF. The article indicated how quickly NSF is becoming integrated into the Ballston community in a very positive way. GSA's decision to award the NSF space to Ballston and the exercising of its legal authority to direct the NSF to move to Ballston was very unpopular with NSF and ultimately required White House intervention to resolve the matter. GSA's sound decision on the NSF relocation is now being vindicated. Reluctant tenant agencies should not be allowed to subvert the competitive process and the significant GSA expertise that goes into making major space procurement decisions. Congress and the Executive Branch should insist that GSA exercise its legal authority to assign space and that recalcitrant agencies be forced to comply.

Mr. Chairman, while I am not here today to talk about failed procurements, I only wish GSA's resolve had been as great in 1992 regarding its decision to consolidate the FCC headquarters in SW Washington as it was regarding its choice of Ballston for the NSF. If GSA had stuck by its guns under unprecedent pressure from the FCC, we would now be reading success stories regarding that relocation, rather than the government facing potential liability of millions of dollars.

Senator Metzenbaum, in closing, I want to commend you and Chairman Baucus and the other members of the subcommittee for holding this hearing and for reestablishing this committee's critical role in the oversight and approval of Federal real estate and office space decisions. I am encouraged that going forward your involvement will foster an era of constructive cooperation between the Congress and the Executive Branch and the private sector as we seek to better provide for the long-term government space needs. The Public Properties Policy Association is available to Congress, GSA, and other government agencies to be a resource for information and ideas. Thank you.

103D CONGRESS
1ST SESSION

S. 1760

To amend the Public Buildings Act of 1959 to improve the process of constructing, altering, purchasing, and acquiring public buildings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Mr. METZENBAUM (for himself, Mr. SIMPSON, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Public Buildings Act of 1959 to improve the process of constructing, altering, purchasing, and acquiring public buildings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Public Buildings Re-
5 form Act of 1993".

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) **FINDINGS.**—Congress finds that—

8 (1) as of the date of enactment of this Act, the

9 General Services Administration (referred to in this

1 section as "GSA"), as the principal agency responsible
2 for providing office and storage space for Federal workers, controls over 7,700 Federal Government
3 buildings and over 253,000,000 square feet of office and storage space nationwide;

6 (2) in order to carry out the essential house-
7 keeping functions of the Federal Government, for
8 fiscal year 1994, GSA expects to spend more than—

9 (A) \$925,000,000 to construct, alter, pur-
10 chase, and acquire public buildings; and

11 (B) \$2,000,000,000 on leases for space;

12 (3) despite the enormous responsibilities and
13 dedicated work force of GSA, the agency has been
14 plagued with inherent structural weaknesses, internal
15 management and operational problems, frequent
16 changes in leadership and direction, and external
17 pressures from other Federal agencies, the courts,
18 and Congress;

19 (4) GSA lacks a strategic focus, does not operate
20 in a business-like manner, and has not developed
21 a comprehensive policy framework for managing the
22 overall real estate portfolio of the Federal Government
23 of approximately 400,000 buildings;

24 (5)(A) effective congressional oversight of GSA
25 has been lacking; and

1 (B) funding and authorization of public build-
2 ing projects by Congress has been conducted on a
3 piecemeal basis, often without adequate information
4 or detail about actual costs or how a project fits into
5 a long-range plan for meeting the needs of the Fed-
6 eral work force; and

7 (6) the problems described in paragraphs (1)
8 through (5) have resulted in an inefficient and ine-
9 ffective public buildings program and a drain of mil-
10 lions of tax dollars.

11 (b) PURPOSES.—The purposes of this Act are to—

12 (1) ensure that, after the date of enactment of
13 this Act, the public building and leasing projects of
14 the Federal Government meet the needs of the Fed-
15 eral work force in a more strategic, cost-effective
16 manner;

17 (2) strengthen congressional oversight of the
18 real estate activities of GSA by requiring GSA to
19 provide Congress with long-range public building
20 plans and better information on individual projects
21 that are subject to section 7(a) of the Public Build-
22 ings Act of 1959 (40 U.S.C. 606(a));

23 (3) ensure that GSA serves as a central reposi-
24 tory for the asset management information of the
25 Federal Government; and

1 (4) require a report on encouraging competition
2 in the provision of Federal office and storage space
3 to reduce the overall costs of providing office and
4 storage space for the Federal Government.

5 **SEC. 3. CONGRESSIONAL OVERSIGHT OF PUBLIC BUILD-**
6 **INGS PROJECTS.**

7 (a) IN GENERAL.—Section 7 of the Public Buildings
8 Act of 1959 (40 U.S.C. 606) is amended—

- 9 (1) in subsection (a)—
10 (A) by striking the fourth sentence;
11 (B) by designating the first, second, and
12 third sentences as clauses (i), (ii), and (iii), re-
13 spectively, of paragraph (2)(B);
14 (C) by inserting after “(a)” the following
15 new paragraph:

16 “(1)(A) Not later than February 1, 1995, and Feb-
17 ruary 1 of every second year thereafter, the Administrator
18 shall submit to Congress a biennial public buildings plan
19 (referred to in this subsection as the ‘biennial plan’), for
20 the first 2 fiscal years that begin after the date of submis-
21 sion, for such projects relating to the construction, alter-
22 ation, purchase, or acquisition of public buildings, or the
23 lease of office or storage space, as the Administrator de-
24 termines are necessary to carry out the duties of the Ad-
25 ministrator under this Act or any other provision of law.

1 “(B) The biennial plan shall include—

2 “(i) a strategic long-term capital asset management plan for accommodating the public building needs of the Federal Government which reflects office space demands and fluctuations in market forces affecting building construction and availability

3 “(ii) a list, in order of priority, of construction, alteration, purchase, and acquisition projects subject to paragraph (2) for which authorizations of appropriations are requested for 1 or both of the 2 fiscal years referred to in subparagraph (A), including a description of each project and the number of square feet of space involved with respect to each project;

4 “(iii) a list, in order of priority, of lease and lease renewals for which authorizations of appropriations are requested for 1 or both of 2 fiscal years referred to in subparagraph (A);

5 “(iv) an explanation of the orders of priority specified under clauses (ii) and (iii);

6 “(v) a list of all public buildings proposed to be vacated in whole or in part, to be exchanged for other property, or to be disposed of;

7 “(vi) a proposed budget for the repair and maintenance of public buildings in existence on the date of the biennial plan;

1 “(vii) the estimated annual and total cost of
2 each project; and

3 “(viii) recommendations, prepared in consulta-
4 tion with the Director of the Office of Management
5 and Budget, with respect to appropriations that are
6 necessary to carry out the biennial plan.

7 “(C)(i) The Administrator shall hold a public hear-
8 ing, and certify in the biennial plan that the hearing was
9 held, in the locality of each major construction, alteration,
10 purchase, acquisition, or lease project included in the bien-
11 nial plan.

12 “(ii) Each hearing shall—

13 “(I) examine—

14 “(aa) the economic, social, and other ef-
15 fects and benefits of the project to the locality;
16 and

17 “(bb) the consistency of the project with
18 local urban planning objectives; and

19 “(II) in the case of new construction, consider
20 the impact of the project on local commercial va-
21 eancy rates.

22 “(D) The Administrator shall include in the biennial
23 plan, with respect to each project—

24 “(i) any final report that is required to be pre-
25 pared pursuant to any applicable federal law includ-

1 ing any environmental assessment or impact state-
2 ment required pursuant to the National Environ-
3 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
4 and

5 “(ii) a report that indicates the consideration
6 that was given to facts and issues concerning the
7 project and the various alternatives that were raised
8 during the hearing required under subparagraph (C)
9 or that were otherwise considered.

10 “(E) If a project included in a biennial plan is not
11 approved in accordance with this subsection, or if funds
12 are not made available to carry out the project, the Ad-
13 ministrator may include the project in the next biennial
14 plan.”;

15 (D) in paragraph (2) (as designated by
16 subparagraph (B))—

17 (i) by inserting after “(2)” the follow-
18 ing new subparagraph:

19 “(A) Notwithstanding any other provision of law, the
20 Administrator may not obligate funds that are made avail-
21 able for any project for which approval is required under
22 subparagraph (B) unless—

23 “(i) the project was included in the biennial
24 plan for the fiscal year; and

1 “(ii) a prospectus for the project was submitted
2 to Congress under subparagraph (C).”;

3 (ii) in subparagraph (B) (as des-
4 ignated by subparagraph (B))—

5 (I) in clauses (i) and (ii) (as des-
6 ignated by subparagraph (B)), by
7 striking “\$1,500,000” each place it
8 appears and inserting “\$1,000,000”;

9 (II) in clause (i) (as designated
10 by subparagraph (B)), by adding at
11 the end the following new sentence:
12 “No funds may be used for the alter-
13 ation of a public building to the extent
14 that the cost of the alteration would
15 result in an aggregate cost of alter-
16 ations of the building in excess of
17 \$1,000,000 over a 5-year period, un-
18 less the alteration has been approved
19 in accordance with this clause.”; and

20 (III) in clause (ii) (as designated
21 by subparagraph (B)), by adding at
22 the end the following new sentence:
23 “No funds may be used for the lease
24 of space within a public building to
25 the extent that the lease would result

1 in an aggregate cost of the space
2 leased within the building in excess of
3 \$1,000,000 annually, unless the lease
4 for the additional space in the build-
5 ing has been approved in accordance
6 with this clause.”; and
7 (iii) by adding at the end the follow-
8 ing new subparagraph:

9 “(C) For the purpose of obtaining approval of a pro-
10 posed project under subparagraph (B), the Administrator
11 shall transmit to Congress a prospectus of the project,
12 including—

13 “(i) a brief description of the public building to
14 be constructed, altered, purchased, acquired, or the
15 space to be leased under this Act;

16 “(ii) the location of the public building or the
17 space, and a description of other alternative loca-
18 tions considered, the costs of the alternative loca-
19 tions, and a brief explanation of the rejection of the
20 alternative locations;

21 “(iii) an estimate of the maximum cost, based
22 on the standards for measuring office space of the
23 Building Owners and Managers Association, to the
24 Federal Government of the public building to be con-

1 structed, altered, purchased, or acquired, or the
2 space to be leased;

3 “(iv) with respect to each alteration of a public
4 building—

5 “(I) a description of each previous alter-
6 ation and the cost of the alteration;

7 “(II) a statement of whether future ex-
8 penditures for which approval is required under
9 subparagraph (B) are anticipated to maintain
10 the building; and

11 “(III) the expected remaining useful life of
12 the building;

13 “(v) a comprehensive plan for providing space
14 for all Federal Government officers and employees in
15 the locality of the proposed public building or the
16 space to be leased, after considering suitable space
17 that may continue to be available in Federal Govern-
18 ment-owned or occupied public buildings in existence
19 on the date of the plan;

20 “(vi) with respect to each project for the con-
21 struction, alteration, purchase, or acquisition of a
22 public building, a statement by the Administrator
23 that suitable space owned by the Federal Govern-
24 ment is not available and that suitable rental space

1 is not available at a price commensurate with the
2 price of the proposed project;

3 “(vii) a descriptive analysis that outlines the ra-
4 tionale, economics, and cost savings associated with
5 selecting construction, alteration, purchase, or acqui-
6 sition of a public building over each of the other al-
7 ternatives, including a certification by the Adminis-
8 trator that realistic economic assumptions are uti-
9 lized to justify a proposed project; and

10 “(viii) a statement of rents and other housing
11 costs being paid, as of the date of the prospectus,
12 by the Federal Government for the Federal agencies
13 to be housed in the public building to be con-
14 structed, altered, purchased, or acquired, or the
15 space to be leased.”; and

16 (E) by adding at the end the following new
17 paragraph:

18 “(3) If the Administrator, in consultation with the
19 Commissioner of the Public Buildings Service, determines
20 that an overriding economic or safety interest requires
21 emergency authority to construct, alter, purchase, or ac-
22 quire a public building, or lease office or storage space,
23 and that the authority cannot be obtained in a timely man-
24 ner through the biennial planning process required under
25 paragraph (1), the Administrator may submit a written

1 request for the authority to the Committee on Environ-
2 ment and Public Works of the Senate and the Committee
3 on Public Works of the House of Representatives. If Con-
4 gress specifically provides the authority by Act of Con-
5 gress, the Administrator may carry out the emergency
6 project.”;

7 (2) by striking subsection (b); and
8 (3) by redesignating subsections (c) through (f)
9 as subsections (b) through (e), respectively.

10 (b) INCLUSION OF REQUESTED BUILDING PROJECTS
11 IN BIEENNIAL PLAN.—Section 11(b) of such Act (40
12 U.S.C. 610(b)) is amended—

13 (1) by inserting "(1)" after "(b)"; and
14 (2) by adding at the end the following new
15 paragraph:

16 “(2) The Administrator may include a prospectus for
17 the funding of a public building project for which a report
18 is submitted under paragraph (1) in a biennial public
19 buildings plan required under section 7(a)(1).”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—
(1) Section 4(b) of such Act (40 U.S.C. 603(b))
is amended by striking “\$1,500,000” and inserting
“\$1,000,000”.

13

1 (i) in subsection (a), by striking "Committee
2 on Public Works of the Senate and House
3 of Representatives, respectively" each place it
4 appears and inserting "Committee on Environment
5 and Public Works of the Senate and the
6 Committee on Public Works and Transporta-
7 tion of the House of Representatives"; and

8 (ii) in subsection (c)—

9 (I) by striking "Committees on Public
10 Works of the Senate and of the House of
11 Representatives, respectively," and insert-
12 ing "Committee on Environment and Pub-
13 lic Works of the Senate and the Committee
14 on Public Works and Transportation of the
15 House of Representatives"; and

16 (II) by striking "Committee on Public
17 Works of the Senate or the Committee on
18 Public Works of the House of Representa-
19 tives," and inserting "Committee on Envi-
20 ronment and Public Works of the Senate
21 or the Committee on Public Works and
22 Transportation of the House of Represent-
23 atives".

24 (B) Section 11(b) of such Act (40 U.S.C.
25 610(b)) is amended by striking "Committee on Pub-

14

1 lie Works of the Senate or the Committee on Public
2 Works of the House of Representatives” and insert-
3 ing “Committee on Environment and Public Works
4 of the Senate or the Committee on Public Works
5 and Transportation of the House of Representa-
6 tives”.

7 **SEC. 4. FEDERAL GOVERNMENT ASSET MANAGEMENT.**

8 Section 12 of the Public Buildings Act of 1959 (40
9 U.S.C. 611) is amended—

10 (1) in subsection (a)—

11 (A) by inserting “(1)” after “(a)”; and

12 (B) by adding at the end the following new
13 paragraph:

14 “(2) The Administrator shall use the results of the
15 continuing investigation and survey required under para-
16 graph (1) to establish a central repository for the asset
17 management information of the Federal Government.”;

18 and

19 (2) in subsection (b)—

20 (A) by designating the first and second
21 sentences as paragraphs (1) and (2), respec-
22 tively; and

23 (B) by adding at the end the following new
24 paragraph:

25 “(3)(A) Each Federal agency shall—

15

1 “(i) identify unneeded, obsolete, and
2 underutilized public buildings; and

3 “(ii) annually report the information on the
4 buildings described in clause (i) to the Adminis-
5 trator.

6 “(B) The Administrator shall find more cost-effective
7 uses for, or sell, the public buildings identified under sub-
8 paragraph (A).”.

9 **SEC. 5. DESIGNATION OF PUBLIC BUILDINGS OMBUDSMAN.**

10 The Public Buildings Act of 1959 (40 U.S.C. 601
11 et seq.) is amended by adding at the end the following
12 new section:

13 **“SEC. 22. DESIGNATION OF PUBLIC BUILDINGS OMBUDS-
14 MAN.**

15 “(a) IN GENERAL.—The Administrator shall des-
16 ignate an official to act as ombudsman within the Public
17 Buildings Service of the General Services Administration.
18 The ombudsman shall carry out the duties described in
19 subsection (b).

20 “(b) DUTIES.—The ombudsman designated under
21 subsection (a) shall—

22 “(1) receive complaints, grievances, and re-
23 quests for information from the public with respect
24 to matters relating to public buildings and concern-



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1 ing private sector business interests and contracting
2 officers of the General Services Administration;

3 “(2) make findings and render assistance with
4 respect to the complaints, grievances, and requests
5 received under paragraph (1); and

6 “(3) make such recommendations to the Ad-
7 ministrator as the ombudsman considers appro-
8 priate.”.

9 SEC. 6. REPORT ON ENDING GSA MONOPOLY WITH RESPECT TO PUBLIC BUILDINGS PROJECTS.

11 (a) IN GENERAL.—Not later than 1 year after the
12 date of enactment of this Act, the Director of the Office
13 of Management and Budget, in consultation with the Ad-
14 ministrator of General Services, shall report to Congress
15 on the feasibility and desirability of ending the monopoly
16 of the General Services Administration with respect to
17 providing office and storage space for Federal agencies,
18 including whether the ending of the monopoly is necessary
19 and would be cost-effective.

20 (b) PLAN.—If the report required under subsection
21 (a) determines that it is feasible and desirable to end the
22 monopoly, the Director shall submit a plan for ending the
23 monopoly and provide recommendations for the implemen-
24 tation of the plan. The plan shall ensure at least an over-
25 sight role for the General Services Administration in de-

1 terminating the adequacy of the request of an individual
2 agency for office or storage space and whether a proposed
3 project with respect to space is in the best economic inter-
4 ests of taxpayers.

5 **SEC. 7. ADDRESSING GOVERNMENT DOWNSIZING.**

6 (a) **REPORT ON LONG-TERM HOUSING NEEDS.—**

7 (1) **IN GENERAL.**—Not later than 1 year after
8 the date of enactment of this Act, each Federal
9 agency (as defined in section 13(3) of the Public
10 Buildings Act of 1959 (40 U.S.C. 612(3))) shall re-
11 view and report to Congress on the long-term hous-
12 ing needs of the agency. The agency shall attempt
13 to provide for the reduction of the housing needs of
14 the agency.

15 (2) **ASSISTANCE FROM ACCOUNT MANAGERS.—**

16 The Administrator of General Services shall des-
17 ignate 2 account managers for each agency to
18 assist—

19 (A) the agency in carrying out the review
20 required under paragraph (1); and

21 (B) the Administrator in preparing uni-
22 form standards for housing needs for—

23 (i) executive agencies (as defined in
24 section 13(4) of such Act (40 U.S.C.
25 612(4)); and

(ii) establishments in the judicial branch of the Federal Government.

3 (b) REDUCTION IN HOUSING COSTS.—By the end of
4 the third fiscal year that begins after the date of enact-
5 ment of this Act, each Federal agency referred to in sub-
6 section (a)(1) shall reduce by no less than 5 percent—

(1) the aggregate office and storage space held by the agency on the date of enactment of this Act; or

(2) the annual housing costs (including the costs of energy, supplies, furniture, and minor repairs) of the agency, as compared to the housing costs of the agency for the fiscal year during which this Act was enacted.



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